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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2023-00609

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

DRIVER'S LICENSE-DRIVER CONTROL

Rulemaking Hearing

Date

10/26/2023

Time

11:00 AM

Location

Virtual

Subjects and issues involved

The Department of Revenue, Division of Motor Vehicles, Driver Testing and Education unit developed rules, regulations, and certification requirements to establish the working and operational instructions for the conduct of Certified Commercial Driving Schools, Basic Operator Skills Testing Organizations, and Certified Employees. The rules, regulations and requirements will furnish guidelines as necessary for Certified Commercial Driving Schools to remain current with laws and new programs promoting the safety and welfare of the citizens of Colorado and to aid in the detection of fraudulent activities.

Statutory authority

Sections: 24-4-103, 104 and 105; 42-1-102 (43.5); 42-1-204; 42-1-211; 42-1-222; 42-2-105.5; 42-2-106;
42-2-111; 42-2-601, 602, 603, and 604, C.R.S.

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RULE 8
RULES AND REGULATIONS FOR THE CLASS R DRIVER TESTING AND EDUCATION PROGRAM

PURPOSE

The Department of Revenue, Division of Motor Vehicles, Driver Testing and Education unit developed rules, regulations, and certification requirements to establish the working and operational instructions for the conduct of Certified Commercial Driving Schools, Basic Operator Skills Testing Organizations, and Certified Employees. The rules, regulations and requirements will furnish guidelines as necessary for Certified Commercial Driving Schools to remain current with laws and new programs promoting the safety and welfare of the citizens of Colorado and to aid in the detection of fraudulent activities.

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(100) DEFINITIONS

A. **Basic Operator Skills Test (BOST):** The Basic Operator Skills Drive Test (BOSD) or the BasicOperator Skills Written Knowledge Test (BOSW) or both.

B. **Basic Operator Skills Tester (BOST Tester)**: An individual employed by a Certified CommercialDriving School who has successfully passed all training required by the Department and is certified to administer the BOSD and/or the BOSW. For purposes of this rule, “administer”includes proctoring and grading.

C. **Basic Operator Skills Testing Organization (BOSTO):** A Certified Commercial Driving School that is also certified by the Department to conduct the BOST for a permit or driver license.

D. **Behind-The-Wheel (BTW):** Actual instructional driving time during which the novice driver operates a Class R vehicle (e.g., off-street, on-street, on-highway) and is guided by an instructor in the front passenger seat. Observation is not included in behind-the-wheel time.

E. **Certified Commercial Driving School (CCDS):** Any business or any person certified by theDepartment to provide or offer to provide Department approved training or examinations that are statutorily mandated for a driver license or instruction permit.

F. **Certified Employee:** An individual employed by a CCDS and certified by the Department to conduct training, examinations, or access DRIVES.

G. **Class R Vehicle:** Any motor vehicle with a Gross Vehicle Weight Rating of less than 26,001 lbs.as a single unit or in combination, designed to carry 15 or fewer passengers, including the driver, and does not carry hazardous material.

H. **Clock Hour:** Full hour consisting of sixty (60) minutes.

I. **Curriculum:** A course of instruction approved by the Department that meets the minimum requirements to obtain a driving permit.

J. **Department:** The Department of Revenue.

K. **Driver License Written Examination (Examination):** means the DR 2252WE (English versions 1-4) or DR 2252SPWE (Spanish versions 1-4) Driver's License Written Examination or electronic equivalent.

L. **DRIVES:** Driver License Record Identification Vehicle Enterprise Solution as defined in Section 42-1-211, C.R.S.

M. **Driver Testing and Education (DTE):** unit within the Driver License Section of the Department of Revenue, Division of Motor Vehicles.

N. **Expanded Driver Awareness Program / Driver Awareness Program (EDAP/DAP):** A four- hour pre-qualification driver awareness program approved by the Department. Section 42-2- 106(1)(d)(I), C.R.S.

O. **Fiscal Year:** Means July 1st through June 30th.

P. **Instruction Permit:** A document issued by the Department to allow an individual to drive a motorcycle or Class R vehicle, as provided for in section 42-2-106, C.R.S., prior to receiving a Colorado driver license.

Q. **Revocation of Testing Certification:** The permanent withdrawal of a BOST Tester's or a BOSTO's testing privileges by the Department.

R. **Shadow Drive:** Additional practice in drive testing before certification or re-certification.

S. **Suspension of Testing Certification:** An action taken by the Department against a BOST Tester or a BOSTO whereby testing privileges are withdrawn for a specified period of time.

T. **Service Animals:** An animal that is trained to do work or perform tasks for people with disabilities. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals.

U. **Third Party Exam Completion Statement (TPE):** Form generated by DRIVES as a receipt to the applicant that the Certified Employee has entered exam information into DRIVES.

V. **Transaction Completion Statement (TCS):** Form generated by DRIVES to indicate data entered into DRIVES for each exam submitted.

(150) APPLICABILITY

This Rule 8 applies only to BOSTOs, CCDSs, and their Certified Employees that offer statutorily- mandated examinations or statutorily mandated training for a driver license or instruction permit.

(200) GENERAL REQUIREMENTS FOR COMMERCIAL DRIVING SCHOOL CERTIFICATION

A. In order for a Commercial Driving School to be certified by the Department, the school must:

    a. Enter into a written contract with the Department; and

b. Offer a driver education course of instruction approved by the Department.

B. An application for certification must be submitted on forms provided by the Department and must be typed and indicated on the form the type of certification being requested. Incomplete applications will not be accepted.

C. A copy(s) of the CCDS's registration with the Secretary of State, along with any other documentation required by the county or city, are required to be submitted with the application.

D. A CCDS's place of business must be a separate establishment and not part of a residence.

a. All CCDSs are required to have a mailing address that is not a post office box.

E. Each new owner/manager must complete records management training offered by the Department prior to certification.

F. A CCDS must have proof of current and valid general liability insurance, vehicle insurance and registration, surety bond, and worker's compensation insurance in the form of an insurance certificate, if required by the Workers' Compensation Act [Sections 8-40-101, et. seq. C.R.S.], on file with the Department at all times.

a. The Department must be listed on the general liability insurance policy and the vehicle insurance policy as a secondary insured.

b. No fewer than 30 days before the current insurance coverage expires, the CCDS must provide an updated insurance certificate to the Department.

c. The CCDS must notify the Department immediately upon cancellation of an insurance policy.

d. Failure to maintain current insurance coverage and or surety bond is grounds for suspension, and such suspension may be in effect until a current insurance certificate is provided to the Department.

G. A CCDS must provide an inventory of all Class R vehicles used for testing/training, and proof of second brake installation and instructor mirror to the Department. Changes to vehicle inventory must be reported, in writing, to the Department within 30 days of the change.

H. Bond: A CCDS must maintain a surety bond, executed by a surety company authorized to do business in Colorado, in the amount of $10,000 with the Department.

a. The bond must be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond attributable to the willful, intentional, or negligent conduct of the CCDS, or its agents or employees;

b. If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the CCDS's certification may be suspended. The suspension may continue until satisfactory steps are taken to restore the original amount of the bond; and

c. The Department must be named as the beneficiary on the bond.

I. Physical facilities: A CCDS requesting certification by the Department must have a place of business with facilities to conduct classes and to maintain all required files and records:

   a. All forms issued by the Department must be secured in limited access areas;

   b. A CCDS must obtain written permission from property owners, on a DR 2060 Classroom Consent form prior to conducting driver education training on the property. The completed DR 2060 Classroom Consent must be submitted to the Department prior to the commencement of training on the property;

   c. If a CCDS uses approved public facilities as a place of business, then Certified Employees for the CCDS must have a copy of its CCDS certification and DR 2060 Classroom Consent in their possession.

J. A CCDS must provide to all Certified Employees a current version of Rule 8 upon hire and must monitor and ensure their Certified Employees follow all applicable rules and regulations and Colorado Revised Statutes. A signed acknowledgment must be kept on file for each employee for the duration of their employment.

K. A CCDS must notify the Department in writing within three days of any change in the location of the place of business, directors, owners, or managers of any CCDS. Certifications are not transferable.

L. If a CCDS is sold or transferred to a new owner, then the new owner must file a new application for certification, sign a new contract (if operating under a new EIN) with the Department and be approved by the Department before beginning operation under the new ownership. Failure to inform the Department of any ownership change is grounds for revocation or suspension of CCDS certification.

(201) CURRICULUM

A. A CCDS that trains using a simulator or range driving or department designed homework cannot use this time towards the six-hours BTW training, but may count up to two hours towards classroom hours.

B. A CCDS must offer a 30-hour driver education curriculum approved by the Department, except that a CCDS that provides only EDAP/DAP training need not offer a 30-hour course but must meet the requirements in section 303 of this rule.

C. When a curriculum is submitted for approval, the curriculum must include a lesson plan with an instructor guide, course outline, and course content (including simulator), all in the format required.

D. A CCDS may appeal the disapproval of its curriculum by filing a written appeal with the Department's Hearings Division within 60 calendar days after the date of the notice of disapproval.

E. A CCDS must teach the approved curriculum, including the required hours, and cannot change the curriculum without resubmission and re-approval.

Driver education courses must be equal to or exceed the requirements for hours of instruction (excluding mealtimes/breaks) and course content as set forth in the Department's application form for CCDS certification. The curriculum requirements for a driver education course, EDAP, or BTW training are available on the Department's official website.

(202) CURRICULUM WITHDRAWAL

A. Approval of a CCDS's curriculum may be withdrawn if the curriculum is not compliant with statute, rule, or regulation.

B. If a CCDS is notified that approval for its curriculum has been withdrawn, the authority of the CCDS to teach the curriculum may be suspended, or such authority may be summarily suspended and the CCDS must immediately cease instructing and entering information into DRIVES.

(203) CLASSROOM REQUIREMENTS

A. A classroom must have working audio and video presentation equipment and provide at least one book per student as required by the curriculum.

B. With the exception of internet, a CCDS must provide a classroom that meets the following requirements:

   a. has space to seat all students, containing at least one seat and desk/table for each student, and one program instructor's desk, table, or podium; and

   b. has restroom(s) available for student use.

C. Approval of the classroom by the Department is required prior to scheduling the first class.

D. Modular units must be inspected and approved in writing by the Department prior to any classes being taught at the unit.

E. CCDS, EDAP, and DAP programs must not be conducted in a home, mobile home, apartment, or living quarters of any kind.

(300) CERTIFIED COMMERCIAL DRIVING SCHOOL OPERATING REQUIREMENTS

A. A CCDS must comply with applicable Colorado Revised Statutes, Department rules and regulations.

B. A CCDS must cooperate with an investigation of a complaint against the CCDS or its Certified Employee.

C. A CCDS may provide information to applicants regarding documentation required by the Department for the issuance of Class R instruction permits, licenses, or identification cards, but should not contact the Department regarding an applicant's driving record except as specifically provided in this rule.

D. A CCDS must ensure that all Certified Employees of the CCDS:

   a. provide to the Department a CBI background check (out of state Internet organizations excluded) and a typed DR 2066 New CCDS Employee Request. All background checks must be submitted matching the name on the driver license and using the correct date of birth.

   b. be over 21 years of age and have a valid license;

   c. not have a personal driving record showing the accumulation of eight or more points or a suspension or revocation of driving privileges in the preceding three years;

   d. fully and accurately complete testing/training forms prior to entering into DRIVES;

e. do not share or divulge passwords and/or logins;

f. provide a unique email address per tester number to acquire access to DRIVES;

g. immediately enter TCSs for individuals that have been tested, regardless of pass or fail;

h. enter TCSs for individuals who have been trained within two business days of completion;

i. contact DTE immediately by phone or email upon entering incorrect information that affects the results of training/testing into DRIVES;

j. do not enter false or inaccurate TCSs; and

k. attach only Department approved DR forms to the TCS.

E. Entering information that represents that training/testing has been successfully completed, when a student has not successfully completed the testing/training, may result in suspension or revocation of the employee's certification, and the certification of the CCDS employing the Certified Employee may be suspended or revoked.

F. The Department may deny certification of an individual or revoke certification of a Certified Employee if they have been convicted of a felony or any offense involving moral turpitude. Conviction includes a plea of guilty or nolo contendere or a deferred sentence, provided that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence. In determining whether to deny or revoke a certification, the Department will consider the factors contained in section 24-5-101(4), C.R.S.

G. A Certified Employee may not have a personal driving record showing the accumulation of eight or more points in the preceding three years. The Department will randomly audit motor vehicle records (MVR) of all Certified Employees. If an employee has accumulated eight or more points within the preceding three years, the employee's certification for BTW and BOSD may be suspended or revoked.

H. A CCDS must:

a. have a valid organization number on file with the Department;

b. have a corresponding TCS and a supporting DR testing/training form for every entry into DRIVES;

c. submit a new CBI background check (out of state Internet organizations excluded) for each Certified Employee upon renewal;

d. submit a typed DR 2066 New CCDS Employee Request form within 10 days of hiring a new employee listing the certifications requested (excluding BOSD) for the Certified Employee and the result of the CBI background check;

e. ensure that training/testing forms are fully and accurately completed prior to entering the information into DRIVES;

f. ensure that information is accurately entered into DRIVES by its Certified Employees. Any incorrect information entered into DRIVES that affects the result of training/testing must be reported to the Department immediately;

g. ensure that if a TCS is reversed or entered multiple times, all TCSs are attached to the corresponding supporting documentation;

h. ensure that entries into DRIVES are not made prior to the completion of training/testing;

i. ensure that only the TCS is stapled to the Department approved supporting documentation and that the TPE is provided to the applicant;

j. ensure that training/testing times reported by the CCDS do not overlap with classroom, BTW, and Drive testing;

k. ensure that every entry into DRIVES has a corresponding TCS and its Department approved supporting documentation; and

l. ensure that all testing/training entries into DRIVES are associated with the applicant's Customer Identifier Number or pre-registration confirmation number.

I. A CCDS must notify the Department of the location of all branch offices. Branch opening notices must include copies of the business license(s). Written notice must be provided to the Department within three business days of opening or closing any branch office, and the notice must include the names of all Certified Employees to be added or deleted from the CCDS's certification and the date the branch office was opened or closed. A branch office is required to meet all classroom and physical facilities requirements applicable to the main facility. All branch offices must be approved by the Department before teaching may begin.

J. A CCDS must maintain on file with the Department current physical and mailing addresses, contact phone numbers, and the name of one contact person who is an employee or principal of the CCDS.

K. The CCDS must ensure that nothing marks or covers the TCS barcode and ensure that the barcode is readable by a barcode scanner.

L. A CCDS must notify the Department in writing within three business days of locking an employee out of DRIVES and the date that a Certified Employee is no longer employed by the CCDS. A CCDS must lock out an employee within one week if they know the employee will not be using DRIVES for over one month.

M. A CCDS must ensure that an applicant's permit is validated in DRIVES before any BTW or BOSD training/testing session.

(301) BEHIND-THE-WHEEL TRAINING

A. Class R vehicles used by a CCDS for BTW training must:

a. be equipped as required in section 42-2-602, C.R.S.;

b. be registered and insured as required in article 3 of title 42 and article 4 of title 10;

c. be available for inspection and audit, and if found to be out of compliance with requirements, the vehicle cannot be used for BTW and/or BOSD until such time as requirements are met; and

d. all vehicles must be inspected and certified by the Department prior to use.

B. All BTW lessons must be in vehicles owned/leased by the CCDS. BTW training must not be conducted in a student's or instructor's private vehicle.

C. Appointment times must not be used as actual start and finish times for BTW training. BTW training must be recorded on a DR 2070 Student Drive Time Log, which must be attached to the BTW TCS.

D. For a CCDS to become certified to teach BTW, a CCDS must submit a BTW curriculum in a lesson plan format to the Department for approval.

(302) CERTIFIED COMMERCIAL DRIVING SCHOOLS OFFERING INTERNET PROGRAMS

A. CCDSs offering internet programs must use the name under which they are registered with the Colorado Secretary of State in any advertising in Colorado.

B. The curriculum of CCDSs offering internet programs must equal or exceed the current minimum standards of the Department and be approved by the Department prior to being sold in the State of Colorado.

C. All CCDSs offering only internet programs must enter into a contract with the Department and be certified as a CCDS and are not eligible to be certified as a BOSTO or a BOST Tester.

D. All CCDSs offering internet programs must maintain an office or storage facility in Colorado containing student files available for audits. Copies of TCSs must be stapled in the upper left corner to an attendance record showing at least 30 hours of participation, all quiz and test scores, and the name and date of birth of the student. The form of the attendance record must be approved by the Department prior to use and must be maintained with the student files.

E. If a CCDS contracts with another CCDS to sell the other CCDS's online product, then the selling CCDS must submit a copy of the contract to the Department within 10 days of the date on which the contract was fully executed.

F. Each CCDS must provide the DTE manager and auditor a username and password that will allow random audits of student records, test scores, curriculum, and security protocols.

G. All internet material must contain an explanation of current Colorado laws including:
   a. minor permit issuance;
   b. BTW requirements; and
   c. requirements for licensure.

H. Internet programs will be monitored to ensure applicants had the opportunity to review the curriculum for the required number of hours prior to issuance of a TPE.

I. Each internet module/section must have a question embedded in it that does not allow progression if a student does not correctly answer the embedded question.

J. After two failed attempts to pass a test/quiz, students must review previous material.

K. A final test must be administered prior to entering a TCS. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz.

L. Students must be shown the correct answers to each question they missed on tests and quizzes prior to re-testing.

M. Students must receive a correct quiz/test score of at least 80% or higher for each module/section before being allowed to go to the next module/section, and students must receive a final test score of 80% or higher before being issued a TPE.

(303) EDAP/DAP PROGRAMS

A. All entities that teach the EDAP/DAP for the purpose of qualifying students for a Colorado minor's instruction permit must be a CCDS and, except as otherwise provided in subsection 201(b) of this rule, meet CCDS curriculum and statutory requirements.

B. DAP must be approved through the National Safety Council and remain in good standing with the NSC rules, regulations, and teaching standards, and must be provided by a CCDS and meet CCDS curriculum and statutory requirements.

C. Students must be 15 years and 6 months of age before completing an approved EDAP/DAP.

(304) ADVERTISING

A. Advertisements and CCDS employees must not state or imply that a CCDS can issue, or guarantee the issuance of, a Colorado driver license or permit.

B. Advertisements and CCDS employees must not state or imply that a CCDS, or the employee, has influence over the Department in the issuance of a Colorado driver license or permit.

C. No CCDS, BOST Tester, BOSTO or CCDS employee or agent is permitted to solicit or advertise on the premises of a Colorado driver license office.

D. Use of the Colorado State seal/logo by a CCDS is strictly prohibited.

E. CCDSs must not advertise a business practice that violates any Colorado Revised Statute or rule, or regulation.

(305) CONTRACTS

A. All contracts for driver education between a CCDS and any individual or entity must contain, at a minimum, the following:

    a. CLASSROOM INSTRUCTION: package rate, the available dates or the website where dates can be found, times and length of each lesson, and the total number of hours of instruction;

    b. INTERNET INSTRUCTION: mandated completion date if any, the total cost, and a telephone contact number and the times technical and/or informational help is available;

c. BEHIND-THE-WHEEL LABORATORY: package rate, the length of each lesson, the total number of hours, and the rate for any vehicle charges. Cancellation or rescheduling policies must be included. Contracts must extend for at least 12 months from the date of permit issuance;

B. All contracts for driver education and testing must contain:

a. a statement that reads: “This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein are not binding on either the school or the student.”

b. a statement that reads: “Under this agreement an instructor may not provide behind-the-wheel training to more than two individual students per session.”

c. a copy of CCDS/parent contracts used for driver education and testing must be provided to the Department in digital format.

(400) BOSTO AND BOST CERTIFICATION

A. A CCDS that is listed as a full-time school (teaches required 30 hours of curriculum and offers six- hours of BTW instruction for at least 20 hours per week) with the Department may apply for certification as a BOSTO. Testing must be equal to the training and examination offered by the Department. Section 42-2- 111(1) (b), C.R.S.

B. Before applying for BOSTO certification, a CCDS must issue 30 student classroom TCS Statements and 30 six-hour BTW TPE Statements for students under the age of 18.

C. BOSTO certifications must be renewed annually before the current certification expires.

D. To renew a BOSTO certification, a CCDS must demonstrate that it has provided 30 hours of classroom training in driver education for at least 50 students and six-hours BTW completion for 25 students under the age of 18 for the preceding Fiscal Year. The Department will not renew the BOSTO written and drive testing privileges of a CCDS until it meets such requirements.

E. Owning or operating a CCDS does not confer certification to administer the BOSW or BOSD for the State of Colorado. BOSW or BOSD can only be administered by a CCDS certified as BOSTO by the Department.

F. Requests for training and certification as a BOST Tester:

a. must be submitted by completing a typed DR 2068 BOST/RST/Continuing Education Training Registration Form;

G. All TCSs must be kept by the CCDS in a secure location and remain under the control of the CCDS.

H. Upon successful completion of the driving skills tester training course by a Certified Employee, and a CCDS having met all additional company training and Department requirements, the Department may certify a CCDS as a BOSTO and a CCDS's employee as a BOST Tester.

I. A CCDS must have at least one employee certified as a BOST Tester to maintain BOSTO certification.

J. In the event the BOSTO certification for a CCDS is not renewed, or is revoked or suspended, all individual BOST Tester certifications for that BOSTO will be canceled.

K. A CCDS may request their BOSTO certification or the BOST Tester certification of any employee be canceled by notifying the Department in writing. Cancellation of a certification does not nullify any of the terms of the contract between the CCDS and the Department.

L. CCDSs must ensure that all their BOST Testers continue to meet the training and qualification standards required to conduct BOST tests. Failure of a tester to attend scheduled training may result in suspension of testing privileges.

M. CCDSs must ensure that each BOST Tester they employ follows the Department's standards for administering BOSTs.

N. Written knowledge and driving skill tests administered by a BOST Tester must be equal to the training and examination conducted by the Department. Section 42-2-111(1)(b), C.R.S.

O. A BOSTO may be suspended from administering a BOSD, BOSW or both.

P. A BOST Tester may be employed by more than one CCDS certified as a BOSTO. A BOST Tester employed by more than one CCDS certified as a BOSTO will be issued a separate tester number for each CCDS employing the BOST Tester. A BOST Tester certification is valid only while the BOST Tester is employed by the CCDS listed on the certificate.

Q. The Department reserves the right to retest any student/applicant if an audit indicates that the test was not properly administered, or not administered at all.

R. A BOST Tester must use only their own login and password to access DRIVES.

S. A BOST Tester must not authorize any person to use his/her login or password.

T. A BOST Tester must refer the following applicants to a Colorado driver license office:

    a. an applicant requesting a required skills test upon completion of a rehabilitation program;

    b. an applicant requesting a DR 2252 (English) or DR 2273 (Spanish) Driver’s License Written Examination after four failed attempts;

    c. an applicant with a valid license that does not have a letter from the Department requiring a test;

    d. an applicant whose permit or license is not valid;

    e. an applicant unable to produce a photo ID.

(401) THE BOSD (Basic Operator Skills Drive Test)

A. BOSD routes must be approved in writing by the Department prior to certification of a CCDS as a BOSTO. BOST Testers must administer the BOSD only on routes approved by the Department for the BOSTO employing the BOST Tester. BOSTOs must request and receive approval from the Department in writing for any changes to an approved drive route prior to administering a BOSD.

B. A BOSTO that has multiple physical teaching locations must request approval for each route prior to testing.

C. Testing on an approved test route must begin from an approved teaching location that offers at least 20 hours of BTW per week and a 30-hour curriculum class or by a BOSTO using an approved satellite testing location that may not be within 30 miles of any other BOSTO.

D. Two approved BOSD routes are required from each approved teaching location.

E. BOSTOs are required to maintain copies of approved drive routes in their files in the Department approved format.

F. BOST testers must use all routes on an equal basis. Any testing on a route not previously approved may result in suspension or revocation of the BOSTO and/or BOST Tester's certification.

G. Using approved testing routes as a "pre-test" or during BTW as a practice test for students or teaching to the test may result in suspension or revocation of a BOST Tester's certification.

H. Only BOST Testers may administer the BOSD and sign the DR 2732 Basic Operator Driving Skill Test score sheet confirming test completion.

I. BOST Testers must complete all testing forms accurately and completely.

J. The BOSTO must ensure that BOST Testers complete all testing forms accurately and ensure information is entered into DRIVES accurately.

K. A Certified Employee entering test results to produce a TCS constitutes a representation by the Certified Employee that the applicant whose name is on the TCS took the BOSD.

L. BOSTOs must hold the State harmless from liability resulting from a BOST Tester's administration of the BOSD.

M. Prior to administering any BOSD, the BOST Tester administering the test must ensure applicants have a valid driving permit or license (with a letter from the Department requiring a test) in their immediate possession and the BOST Tester must validate the permit in DRIVES.

N. A road test is not allowed if an applicant does not meet statutory licensing requirements. Testing an applicant before they meet the statutory requirements and/or postdating a DR 2732 Basic Operator Driving Skill Test score sheet is grounds for suspension or revocation of BOST Tester's certification.

O. BOST Testers must verify that any Class R vehicle used for testing:

    a. is properly registered and insured. Both the insurance and the registration cards must be in the vehicle and match the vehicle identification numbers; insurance verification can be digital.

    b. has both front and rear license plates attached to the outside of the vehicle; or temporary tags must be visible from the back of the vehicle;

    c. has passed a safety inspection by the BOST Tester to ensure all necessary equipment is in safe operating order, and that the vehicle meets all applicable Colorado Revised Statutes for operation on a public roadway;

d. is inspected for compliance with this subsection prior to every BOSD, regardless of who owns the vehicle; and

e. is either registered to the BOSTO as a training vehicle for BTW training or a vehicle provided by the applicant.

P. Prior to administering a BOSD, a Certified Employee must complete the information section of the DR 2732 Basic Operator Driving Skill Test score sheet including the date of the test, the name of the applicant, the vehicle, the organization, the tester information, and the BOST Tester, after the instructions have been read verbatim, fill in the start time on the score sheet. Once the car has been secured at the end of the BOSD, the finish time and applicant's score must be written on the score sheet, even if the applicant has failed the test. No alterations can be made to the DR 2732 after the BOSD has been completed.

Q. Applicants and BOST Testers are prohibited from smoking/vaping, drinking, or eating during a BOSD. All electronic devices and cell phones must be silenced during the test.

R. BOST Testers must conduct a full BOSD in accordance with Colorado Revised Statutes, rules, contract, and BOST Standards. All tests must be recorded on DR 2732 Basic Operator Driving Skill Test score sheet provided by the Department.

S. BOSDs must be done during daylight hours. For purposes of this rule, daylight hours mean the period between one-half hour before sunrise and one-half hour after sunset.

T. After a BOSD is completed, the BOST Tester must immediately critique the applicant’s performance on the test, in a location outside of the vehicle. If the applicant is a minor, the critique must be done in the presence of the parent/guardian if the parent/guardian is present.

U. Upon successful completion of a BOSD, a Certified Employee must immediately enter information into DRIVES and provide the applicant with the TPE. The Certified Employee must staple the TCS to the upper left of the DR 2732 Basic Operator Driving Skill Test score sheet.

V. BOST Testers must note all failures on an applicant’s DR 2732 Basic Operator Driving Skill Test score sheet and ensure all failures are entered into DRIVES immediately after the test is completed.

W. An applicant under 18 years of age holding an out of state instruction permit may take one BOSD with a BOSTO on the permit if the minor has met the statutory requirements. An applicant 18 years of age or older with an out of state instruction permit cannot be tested by a BOST Tester.

X. A BOST Tester must not administer more than one complete BOSD per day to any applicant. Giving an applicant more than one BOSD per day may result in suspension of the tester's certification.

Y. No passengers, pets (service dogs excluded), or interpreters may be in a vehicle during BOSD. Occupants in a vehicle during a BOSD are limited to the applicant and the tester, with the following exceptions:

a. A Department representative may be in the vehicle when an audit is being performed for quality assurance purposes; or

b. Another BOST Tester may be in the vehicle for training and evaluation purposes, if prior notification was given to the Department.

Z. The TPE is valid for 180 days from the date of issue.

(402) THE BOSW (Basic Operator Skills Written Knowledge Test)

A. BOST Testers administering the BOSW must ensure the TPE is issued to the applicant upon completion of the BOSW.

B. BOST Testers administering the DR 2252 or DR 2273 Driver's License Written Examination:

a. must administer BOSW only at a business location pre-approved by the Department;

b. must ensure that applicants do not access any unauthorized assistance, including but not limited to, written material, cell phones, or electronic devices, or communicate with any unauthorized person while testing;

c. must require applicants to write their first and last name(s), date of birth, and the date of the BOSW in the information box provided on the BOSW, and interpreters, including BOST Testers acting as an interpreter, must write their first and last name(s) and driver license number on the back of the BOSW. The BOSW Tester administering the BOSW must print and sign certifying they have proctored the test;

d. must require a correct score of 80% or higher to pass;

e. must grade correctly using the score key when grading a DR 2252 or DR 2273 Driver's License Written Examination;

f. must use a red pen unless the BOSW is graded electronically;

g. may provide up to four DR 2252 or DR 2273 Driver's License Written Examinations per applicant in total including written examinations taken at other CCDSs. An applicant may not take more than two tests per day, regardless of whether it is at one location or separate locations. If an applicant fails four DR 2252 or DR 2273s, regardless of when or at which locations the DR 2252 or DR 2273s are completed, all subsequent paper DR 2252WE or DR 2252WESP Driver's License Written Examinations must be taken at a Department driver license office. The four-test limit does not apply to electronically completed BOSWs;

h. must ensure that if an applicant fails the first BOSW with the BOSTO, then all subsequent BOSWs must be a different version. If an applicant misses more than 50% of the questions on a first test attempt, the applicant must wait until the next day to test again; and

i. must ensure every BOSW result is entered into DRIVES immediately regardless of pass or fail upon completion of the BOSW.

C. Applicants may use an interpreter for the BOSW.

D. An interpreter must be at least 16 years old and show an unexpired driver license from any state in the United States.

E. The BOST Tester or other interpreter can interpret in the required language and can only interpret the questions and answer choices.

F. The BOSW must not be given to any applicant under the age of 14 years and 11 months.

G. BOSWs must not be used as “class final exam”, “practice” or “pre” tests.

H. BOSWs may not be copied outside the physical facilities unless the BOSWs remain under the direct supervision and control of a BOSTO.

I. Test results must not be partially or fully entered until after a student has completed the BOSW.

J. BOST Testers administering the BOSW must periodically check with the Department to confirm they have the most current version of tests/keys.

K. BOSWs must be administered by a BOST Tester with a BOSW certification.

L. The BOST Tester whose name, signature and tester number are on the back of the DR 2252 (English) or DR 2273 (Spanish) Driver’s License Written Examination must accurately grade the BOSW.

M. The TPE is valid for 180 days from the date of issue.

(403) BOST TESTER REQUIREMENTS

A. The Department will not renew the certification of BOST Tester who has not administered a minimum of 24 BOSDs each Fiscal Year.

   a. A BOST Tester who does not meet this minimum requirement prior to July 1st may be renewed if he/she successfully completes a one-day continuing education within the first six months of the next Fiscal Year.

   b. A BOST Tester who fails to successfully complete the continuing education within the first six months of the next Fiscal Year must successfully complete a two-day continuing education as a condition of renewal.

B. Failure to complete the minimum number of BOSDs will result in suspension of a tester’s certification until successful completion of the required continuing education.

C. All BOST Testers must possess and maintain a valid unrestricted State of Colorado driver license prior to certification and be at least 21 years of age.

D. BOST Testers must recertify their BOSD certification with the Department every two calendar years. Failure to attend a Department continuing education class or recertifying event within a two-year period may result in suspension of a tester's certification until continuing education has been successfully completed.-

E. BOST Testers cannot administer any BOST to a member of their immediate family. “Immediate family” is defined at section 42-1-102(43.5), C.R.S.

F. A potential BOSD Tester:

a. must complete and pass the BOST training class;

b. must provide evidence of four shadow drives on each route the tester will be using for BOSDs accompanied by a typed DR 2069 Shadow Cover Page (all within three errors as documented by another BOST Tester); and

c. must complete all Shadow Drives within six weeks of passing the BOST training class unless granted an extension under special circumstances.

G. To be eligible for a BOST class, a potential BOSD Tester must have conducted at least 24 hours of BTW training or been employed by a BOSTO for at least one year.

H. Applicants failing the BOSD with a BOST Tester must be re-tested by a different BOST Tester (The Department may waive this requirement upon request if the Department determines that this would be a hardship).

I. BOST Testers will be evaluated on their ability to meet Department grading standards for BOSDs. The evaluation may be conducted during an actual BOSD or a BOSD with a Department representative as the driver. BOST Testers must follow Department procedures, meet Department standards and must pass the evaluation with a score of 80% or higher. Failure to pass the evaluation will be grounds for the Department to require additional continuing education and/or suspension of the BOST Tester certification.

J. The Department may deny certification of an individual or revoke certification of a Certified Employee if they have been convicted of a felony, or any offense involving moral turpitude. Conviction includes a plea of guilty or nolo contendere or a deferred sentence, provided that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence. In determining whether to deny or revoke a certification, the Department will consider the factors contained in section 24-5-101(4), C.R.S.

(500) RECORDKEEPING AND REPORTING

A. CCDSs and BOSTOs must use only the most current version of Department forms and must account for all TCS, testing, and training forms.

B. Audited records must be stored securely for a period of three years. Records include all contracts, records of student enrollment, DR 2045 Attendance Records, DR 2046 Attendance Records, and DR 2052 Attendance Records, DR 2070 Student Drive Time Logs, DR 2252WE (English versions 1-4) and DR 2252WESP(Spanish versions 1-4) Driver's License Written Examinations, DR 2732 Basic Operator Driving Skill Test score sheets, progress reports, student TCSs, and control numbered forms previously issued by the Department.

C. Student/parent contracts, progress reports and student enrollment records may be stored electronically after they have been audited.

D. After three years all testing records must be shredded.

E. All required testing information must be entered into DRIVES immediately, including passed and failed examinations.

F. Training information (including driver education, EDAP/DAP, and BTW) must be entered into DRIVES within two business days of the student's completion.

G. All TCSs must be maintained in chronological (date) order by submitted date and separated by exam type.

H. CCDSs, BOSTOs, and Certified Employees are responsible for securing all blank training/testing forms, all TCSs, and passwords/logins associated with DRIVES.

I. Post-dating, pre-dating, pre-filling, or partial completion of any testing/training form is not allowed.

J. The CCDS is responsible for inaccurate/missing entries into DRIVES.

(600) AUDITING

A. CCDSs must allow the Department to observe classroom instruction and BTW training.

B. CCDSs are required to allow onsite inspections, examinations, and audits by a Department representative without prior notice in order to:

   a. review all required documentation, including, but not limited to, all TCSs, DR 2045 Attendance Records, DR 2046 Attendance Records, and DR 2052 Attendance Records, DR 2070 Student Drive Time Logs, DR 2252WE (English versions 1-4) and DR 2252WESP (Spanish versions 1-4) Driver's License Written Examinations and DR 2732 Basic Operator Driving Skill Test score sheets;

   b. observe classroom instruction;

   c. observe BTW instruction;

   d. inspect Class R vehicles;

   e. observe and score live road testing by a BOST Tester and compare pass/fail scores;

   f. test the skills of BOST Testers who administer the BOSD; and

   g. observe administration of the BOSW.

C. A CCDS must surrender all required documentation to the Department upon request. The CCDS may make copies and retain copies of such documentation.

D. Audits may be conducted at the CCDS's or BOSTO's office, the Department, or at another location as determined by DTE.

E. To assure that CCDSs and BOSTOs continue to meet the standards established by the Department, a Department representative will conduct on-site inspections, examinations, and audits as often as the Department deems necessary and without prior notice, to review all required documentation, including but not limited to, contracts, student enrollment and progress records, DR 2045 Attendance Records, DR 2046 Attendance Records, and DR 2052 Attendance Records, DR 2070 Student Drive Time Logs, student completion records, classroom facilities, vehicles, and DR 2252WE (English versions 1-4), DR 2252WESP(Spanish versions 1-4) Driver's License Written Examinations, and DR 2732 Basic Operator

Driving Skill Test score sheets. Records will be checked for accuracy and completeness, including, but not limited to, missing TCSs and, in the case of TCSs, for chronological filing sequence by submitted date.

F. During Department audits, CCDSs and BOSTOs must cooperate with the Department, allow access to testing areas and routes, and supply student names and testing records, results, and any other regulated items as requested by the Department.

G. CCDS records must be accessible during the CCDS's normal business hours and made available to a Department representative upon request.

H. A CCDS must provide a TCS for each DRIVES entry with attached testing/training forms immediately if requested by the Department.

I. A CCDS must sign and return any audit report within ten days of receipt.

(700) CERTIFICATION RENEWAL

A. CCDS and Certified Employee certifications must be renewed annually on or before June 30th.

B. CCDS contracts with the Department are subject to annual renewal.

C. Renewal applications are due on June 1st of each calendar year. Failure to submit a sufficient application on or before June 1st may result in a CCDS's or BOSTO's or BOST Tester's certification not being renewed, and the Department will not honor exams entered into DRIVES by the CCDS, BOSTO, or BOST Tester on or after July 1st.

D. Renewal applications must include a breakdown of the price of each package offered by the CCDS or BOSTO.

(800) SUSPENSION/ REVOCATION/ CESSATION OF BUSINESS

A. After a notice and hearing pursuant to the State Administrative Procedure Act [sections 24-4-101, et. seq., C.R.S.], a certification(s) may be suspended or revoked for violations of any applicable Colorado Revised Statute, Rule, Regulation, contract obligation, including but not limited to any of the following:

    a. Failure to return all copies of written knowledge tests and keys, certifications, and any testing/training documents within ten days of cessation of business;

    b. Failure to immediately enter testing results into DRIVES;

    c. Failure to enter training results into DRIVES within two business days of completion;

    d. Failing to comply with the vehicle registration, insurance, surety bond, and equipment requirements of BTW Training;

    e. Refusing to be audited;

f. Failure to address and/or correct deficiencies found in a previous audit or failing two or more audits. The Department's failure to take action based on an audit does not waive the Department's authority to take action later based on that audit;

g. Supplying false information to the Department, or fraudulent testing or the fraudulent use of testing/training forms and/or TCSs;

h. Omitting any test requirement from a BOSW or BOSD;

i. Participation in any illegal activity related to driver licensing; and

j. Incorrectly entering a test as a pass when it should have been a fail or entering a fail when it should have been a pass.

B. Any information obtained by the Department concerning illegal or fraudulent activity concerning, but not limited to written knowledge or driving skills testing, will be referred to the appropriate law enforcement authority.

C. If an applicant's testing was improper, illegal, or fraudulent, the applicant's driver license or instruction permit may be canceled.

D. Where the Department has objective and reasonable grounds to believe and finds, upon a full investigation, that a CCDS, BOSTO, or BOST Tester has been guilty of deliberate and willful violation, or that the public health, safety, or welfare imperatively requires emergency action, and incorporates the findings in its order, it may summarily suspend the certification of the CCDS, BOSTO, or BOST Tester pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection, "full investigation" means a reasonable ascertainment of the underlying facts on which the Department action is based.

a. Upon receipt of a summary suspension, a CCDS, BOSTO or BOST Tester must immediately cease all testing as directed. The Department will promptly institute proceedings for suspension or revocation pursuant to the Administrative Procedure Act.

E. Written complaints about a CCDS, BOSTO, or BOST Tester received by the Department may result in an investigation through the Department or the Motor Vehicle Investigative Unit.

F. If a CCDS is found to be in violation of the terms of its contract with the Department, then the contract between the Department and the CCDS may be terminated.

(950) INCORPORATION BY REFERENCE

A. 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.

RULE 8
RULES AND REGULATIONS FOR THE CLASS R DRIVER TESTING AND EDUCATION PROGRAM

PURPOSE

The Department of Revenue, Division of Motor Vehicles, Driver Testing and Education unit developed rules, regulations and certification requirements to establish the working and operational instructions for the conduct of Certified Commercial Driving Schools, Basic Operator Skills Testing Organizations, and Certified Employees. The rules, regulations and requirements will furnish guidelines as necessary for Certified Commercial Driving Schools to remain current with laws and new programs promoting the safety and welfare of the citizens of Colorado and to aid in the detection of fraudulent activities.

STATUTORY AUTHORITY

Sections: 24-4-103, 104 and 105; 42-1-102 (43.5); 42-1-204; 42-1-211; 42-1-222; 42-2-105.5; 42-2-106; 42-2-111; 42-2-601, 602, 603, and 604, C.R.S.

(100) DEFINITIONS

A. **Basic Operator Skills Test (BOST):** The Basic Operator Skills Drive Test (BOSD) or the BasicOperator Skills Written Knowledge Test (BOSW) or both.

B. **Basic Operator Skills Tester (BOST Tester)**: An individual employed by a Certified CommercialDriving School who has successfully passed all training required by the Department and is certified to administer the BOSD and/or the BOSW. For purposes of this rule, “administer”includes proctoring and grading.

C. **Basic Operator Skills Testing Organization (BOSTO):** A Certified Commercial Driving School that is also certified by the Department to conduct the BOST for a permit or driver license.

D. **Behind-The-Wheel (BTW):** Actual instructional driving time during which the novice driver operates a Class R vehicle (e.g., off-street, on-street, on-highway) and is guided by an instructor in the front passenger seat. Observation is not included in behind-the-wheel time.

E. **Certified Commercial Driving School (CCDS):** Any business or any person certified by theDepartment to provide or offer to provide Department approved training or examinations that are statutorily mandated for a driver license or instruction permit.

F. **Certified Employee:** An individual employed by a CCDS and certified by the Department to conduct training, examinations, or access DRIVES.

G. **Class R Vehicle:** Any motor vehicle with a Gross Vehicle Weight Rating of less than 26,001 lbs.as a single unit or in combination, designed to carry 15 or fewer passengers, including the driver, and does not carry hazardous material.

H. **Clock Hour:** Full hour consisting of sixty (60) minutes.

I. **Curriculum:** A course of instruction approved by the Department that meets the minimum requirements to obtain a driving permit.

J. **Department:** The Department of Revenue.

K. **Driver License Written Examination (Examination):** means the DR 2252WE (English versions 1-4) or DR ~~2273~~ 2252SPWE (Spanish versions 1-4) Driver's License Written Examination or electronic equivalent.

L. **DRIVES:** Driver License Record Identification Vehicle Enterprise Solution as defined in Section 42-1-211, C.R.S.

M. **Driver Testing and Education (DTE):** unit within the Driver License Section of the Department of Revenue, Division of Motor Vehicles.

N. **Expanded Driver Awareness Program / Driver Awareness Program (EDAP/DAP):** A four- hour pre-qualification driver awareness program approved by the Department. Section 42-2- 106(1)(d)(I), C.R.S.

O. **Fiscal Year:** Means July 1st through June 30th.

P. **Instruction Permit:** A document issued by the Department to allow an individual to drive a motorcycle or Class R vehicle, as provided for in section 42-2-106, C.R.S., prior to receiving a Colorado driver license.

Q. **Revocation of Testing Certification:** The permanent withdrawal of a BOST Tester's or a BOSTO's testing privileges by the Department.

R. **Shadow Drive:** Additional practice in drive testing before certification or re-certification.

S. **Suspension of Testing Certification:** An action taken by the Department against a BOST Tester or a BOSTO whereby testing privileges are withdrawn for a specified period of time.

T. **Service Animals:** An animal that is trained to do work or perform tasks for people with disabilities. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals.

U. **Third Party Exam Completion Statement (TPE):** Form generated by DRIVES as a receipt to the applicant that the Certified Employee has entered exam information into DRIVES.

V. **Transaction Completion Statement (TCS):** Form generated by DRIVES to indicate data entered into DRIVES for each exam submitted.

(150) APPLICABILITY

This Rule 8 applies only to BOSTOs, CCDSs, and their Certified Employees that offer statutorily- mandated examinations or statutorily mandated training for a driver license or instruction permit.

(200) GENERAL REQUIREMENTS FOR COMMERCIAL DRIVING SCHOOL CERTIFICATION

A. In order for a Commercial Driving School to be certified by the Department, the school must:

a. Enter into a written contract with the Department; and

b. Offer a driver education course of instruction approved by the Department.

B. An application for certification must be submitted on forms provided by the Department and must be typed and indicated on the form the type of certification being requested. Incomplete applications will not be accepted.

C. A copy(s) of the CCDS's ~~state, county, or municipal business license(s) or waivers,~~ registration with the Secretary of State, along with any other documentation required by the county or city, are required to be submitted with ~~an~~ the application.

D. A CCDS's place of business must be a separate establishment and not part of a residence.

a. All CCDSs are required to have a mailing address that is not a post office box ~~and~~

~~b. A CCDS must request and receive written approval from the Department for record keeping in a residential home office.~~

E. Each new owner/manager must complete records management training offered by the Department prior to certification.

F. A CCDS must have proof of current and valid general liability insurance, vehicle insurance and registration, surety bond, and worker's compensation insurance in the form of an insurance certificate, if required by the Workers' Compensation Act [Sections 8-40-101, et. seq. C.R.S.], on file with the Department at all times.

a. The Department must be listed on the general liability insurance policy and the vehicle insurance policy as a secondary insured.

b. No fewer than 30 days before the current insurance coverage expires, the CCDS must provide an updated insurance certificate to the Department.

c. The CCDS must notify the Department immediately upon cancellation of an insurance policy.

d. Failure to maintain current insurance coverage and or surety bond is grounds for suspension, and such suspension may be in effect until a current insurance certificate is provided to the Department.

G. A CCDS must provide an inventory of all Class R vehicles used for testing/training, and proof of second brake installation and instructor mirror to the Department. Changes to vehicle inventory must be reported, in writing, to the Department within 30 days of the change.

H. Bond: A CCDS must maintain a surety bond, executed by a surety company authorized to do business in Colorado, in the amount of $10,000 with the Department.

a. The bond must be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond attributable to the willful, intentional, or negligent conduct of the CCDS, or its agents or employees;

b. If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the CCDS's certification may be suspended. The suspension may continue until satisfactory steps are taken to restore the original amount of the bond; and

c. The Department must be named as the beneficiary on the bond.

I. Physical facilities: A CCDS requesting certification by the Department must have a place of business with facilities to conduct classes and to maintain all required files and records:

a. All forms issued by the Department must be secured in limited access areas;

b. A CCDS must obtain written permission from property owners, on a DR 2060 Classroom Consent form prior to conducting driver education training on the property. The completed DR 2060 Classroom Consent must be submitted to the Department prior to the commencement of training on the property;

~~c. Each CCDS must post its hours of operation in a conspicuous place and be available to the public during those hours; and~~

d. If a CCDS uses approved public facilities as a place of business, then Certified Employees for the CCDS must have a copy of its CCDS certification and DR 2060 Classroom Consent in their possession.

J. A CCDS must provide to all Certified Employees a current version of ~~this~~ Rule 8 upon hire and must monitor and ensure their Certified Employees follow all applicable rules and regulations and Colorado Revised Statutes. A signed acknowledgment must be kept on file for each employee for the duration of their employment.

K. A CCDS must notify the Department in writing within three days of any change in the location of the place of business, directors, owners, or managers of any CCDS. Certifications are not transferable.

L. If a CCDS is sold or transferred to a new owner, then the new owner must file a new application for certification, sign a new contract (if operating under a new EIN) with the Department and be approved by the Department before beginning operation under the new ownership. Failure to inform the Department of any ownership change is grounds for revocation or suspension of CCDS certification.

(201) CURRICULUM

A. A CCDS that trains using a simulator~~,~~ or range driving~~,~~ or department designed homework ~~homework,~~ cannot use this time towards the six-hours BTW training, but may count up to two hours towards classroom hours.

B. A CCDS must offer a 30-hour driver education curriculum approved by the Department, except that a CCDS that provides only EDAP/DAP training need not offer ~~such~~ a 30-hour course, but must meet the requirements in section 303 of this rule.

C. When a curriculum is submitted for approval, the curriculum must include a lesson plan with an instructor guide, course outline, and course content (including simulator), all in the format required.

D. A CCDS may appeal the disapproval of its curriculum by filing a written appeal with the Department's Hearings Division within 60 calendar days after the date of the notice of disapproval.

E. A CCDS must teach the approved curriculum, including the required hours, and cannot change the curriculum without resubmission and re-approval.

Driver education courses must be equal to or exceed the requirements for hours of instruction (excluding mealtimes/breaks) and course content as set forth in the Department's application form for CCDS certification. The curriculum requirements for a driver education course, EDAP, or BTW training are available on the Department's official website.

(202) CURRICULUM WITHDRAWAL

A. Approval of a CCDS's curriculum may be withdrawn if the curriculum is not compliant with statute, rule, or regulation.

B. If a CCDS is notified that approval for its curriculum has been withdrawn, the authority of the CCDS to teach the curriculum may be suspended, or such authority may be summarily suspended and the CCDS must immediately cease instructing and entering information into DRIVES.

(203) CLASSROOM REQUIREMENTS

A. A classroom must have working audio and video presentation equipment and provide at least one book per student as required by the curriculum.

B. With the exception of internet ~~and home study~~, a CCDS must provide a classroom that meets the following requirements:

   a. has space to seat all students, containing at least one seat and desk/table for each student, and one program instructor's desk, table, or podium; and

   b. has restroom(s) available for student use.

C. Approval of the classroom by the Department is required prior to scheduling the first class.

D. Modular units must be inspected and approved in writing by the Department prior to any classes being taught at the unit. ~~Motorized mobile units will not be approved.~~

E. CCDS, EDAP, and DAP programs must not be conducted in a home, mobile home, apartment, or living quarters of any kind.

(300) CERTIFIED COMMERCIAL DRIVING SCHOOL OPERATING REQUIREMENTS

A. A CCDS must comply with applicable Colorado Revised Statutes, Department rules and regulations.

B. A CCDS must cooperate with an investigation of a complaint against the CCDS or its Certified Employee.

C. A CCDS may provide information to applicants regarding documentation required by the Department for the issuance of Class R instruction permits, licenses, or identification cards, but should not contact the Department regarding an applicant's driving record except as specifically provided in this rule.

D. A CCDS must ensure that all Certified Employees of the CCDS:

a. provide to the Department a CBI background check (out of state Internet organizations excluded) and a typed DR 2066 New CCDS Employee Request. All background checks must be submitted matching the name on the driver license and using the correct date of birth.

b. be over 21 years of age and have a valid license;

c. not have a personal driving record showing the accumulation of eight or more points or a suspension or revocation of driving privileges in the preceding three years;

d. fully and accurately complete testing/training forms prior to entering into DRIVES;

e. do not share or divulge passwords and/or logins;

f. provide a unique email address per tester number to acquire access to DRIVES;

g. immediately enter TCSs for individuals that have been tested, regardless of pass or fail;

h. enter TCSs for individuals who have been trained within two business days of completion;

i. contact DTE immediately by phone or email upon entering incorrect information that affects the results of training/testing into DRIVES;

j. do not enter false or inaccurate TCSs; and

k. attach only Department approved DR forms to the TCS.

E. Entering information that represents that training/testing has been successfully completed, when a student has not successfully completed the testing/training, may result in suspension or revocation of the employee's certification, and the certification of the CCDS employing the Certified Employee may be suspended or revoked.

F. The Department may deny certification of an individual or revoke certification of a Certified Employee if they have been convicted of a felony or any offense involving moral turpitude. Conviction includes a plea of guilty or nolo contendere or a deferred sentence, provided that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence. In determining whether to deny or revoke a certification, the Department will consider the factors contained in section 24-5-101(4), C.R.S.

G. A Certified Employee may not have a personal driving record showing the accumulation of eight or more points in the preceding three years. The Department will randomly audit motor vehicle records (MVR) of all Certified Employees. If an employee has accumulated eight or more points within the preceding three years, the employee's certification for BTW and BOSD may be suspended or revoked.

H. A CCDS must:

a. have a valid organization number on file with the Department;

b. have a corresponding TCS and a supporting DR testing/training form for every entry into DRIVES;

c. submit a new CBI background check (out of state Internet organizations excluded) for each Certified Employee upon renewal;

d. submit a typed DR 2066 New CCDS Employee Request form within 10 days of hiring a new employee~~, submit a typed DR 2066 New CCDS Employee Request form~~ listing the certifications requested (excluding BOSD) for the Certified Employee and the result of the CBI background check;

e. ensure that training/testing forms are fully and accurately completed prior to entering the information into DRIVES;

f. ensure that information is accurately entered into DRIVES by its Certified Employees. Any incorrect information entered into DRIVES that affects the result of training/testing must be reported to the Department immediately;

g. ensure that if a TCS is reversed or entered multiple times, all TCSs are attached to the corresponding supporting documentation;

h. ensure that entries into DRIVES are not made prior to the completion of training/testing;

i. ensure that only the TCS is stapled to the Department approved supporting documentation and that the TPE is provided to the applicant;

j. ensure that training/testing times reported by the CCDS do not overlap with classroom, BTW, and Drive testing;

k. ensure that every entry into DRIVES has a corresponding TCS and its Department approved supporting documentation; and

l. ensure that all testing/training entries into DRIVES are associated with the applicant's Customer Identifier Number or pre-registration confirmation number.

I. A CCDS must notify the Department of the location of all branch offices. Branch opening notices must include copies of the business license(s). Written notice must be provided to the Department within three business days of opening or closing any branch office, and the notice must include the names of all Certified Employees to be added or deleted from the CCDS's certification and the date the branch office was opened or closed. A branch office is required to meet all classroom and physical facilities requirements applicable to the main facility. All branch offices must be approved by the Department before teaching may begin.

J. A CCDS must maintain on file with the Department current physical and mailing addresses, contact phone numbers, and the name of one contact person who is an employee or principal of the CCDS.

K. The CCDS must ensure that nothing marks or covers the TCS barcode and ensure that the barcode is readable by a barcode scanner.

L. A CCDS must notify the Department in writing within three business days of locking an employee out of DRIVES and the date that a Certified Employee is no longer employed by the CCDS. A CCDS must lock out an employee within one week if they know the employee will not be using DRIVES for over one month.

M. A CCDS must ensure that an applicant's permit is validated in DRIVES before any BTW or BOSD training/testing session.

~~N. Home Study curriculums must:~~

~~a. meet the Departments minimum 30-hour curriculum requirements in section (201);~~

~~b. provide, in person or online, a final test that is administered prior to providing a TCS. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz;~~

~~c. if the provider's main facility is out-of-state, maintain a branch office in Colorado containing student files and copies of TCSs with the DR 2052 Student Attendance Record for a 30-Hour Home Study Program form;~~

~~d. provide a TPE to each student upon successful completion of the course; and~~

~~e. not provide a TPE to a student unless the student receives a correct score of 80% or higher on the final test.~~

(301) BEHIND-THE-WHEEL TRAINING

A. Class R vehicles used by a CCDS for BTW training must:

a. be equipped as required in section 42-2-602, C.R.S.;

b. be registered and insured as required in article 3 of title 42 and article 4 of title 10;

c. be available for inspection and audit, and if found to be out of compliance with requirements, the vehicle cannot be used for BTW and/or BOSD until such time as requirements are met; and

d. ~~be available for inspection by the Department prior to certification of a CCDS, or if obtained after certification, be~~ all vehicles must be inspected and certified by the Department ~~available for inspection~~ prior to use~~.~~

B. All BTW lessons must be in vehicles owned/leased by the CCDS. BTW training must not be conducted in a student's or instructor's private vehicle.

C. Appointment times must not be used as actual start and finish times for BTW training. BTW training must be recorded on a DR 2070 Student Drive Time Log, which must be attached to the BTW TCS.

D. For a CCDS to become certified to teach BTW, a CCDS must submit a BTW curriculum in a lesson plan format to the Department for approval.

(302) CERTIFIED COMMERCIAL DRIVING SCHOOLS OFFERING INTERNET PROGRAMS

A. CCDSs offering internet programs must use the name under which they are registered with the Colorado Secretary of State in any advertising in Colorado.

B. The curriculum of CCDSs offering internet programs must equal or exceed the current minimum standards of the Department and be approved by the Department prior to being sold in the State of Colorado.

C. All CCDSs offering only internet programs must enter into a contract with the Department and be certified as a CCDS and are not eligible to be certified as a BOSTO or a BOST Tester.

D. All CCDSs offering internet programs must maintain an office or storage facility in Colorado containing student files available for audits. Copies of TCSs must be stapled in the upper left corner to an attendance record showing at least 30 hours of participation, all quiz and test scores, and the name and date of birth of the student. The form of the attendance record must be approved by the Department prior to use and must be maintained with the student files.

E. If a CCDS contracts with another CCDS to sell the other CCDS's online product, then the selling CCDS must submit a copy of the contract to the Department within 10 days of the date on which the contract was fully executed.

F. Each CCDS must provide the DTE manager and auditor a username and password that will allow random audits of student records, test scores, curriculum, and security protocols.

G. All internet material must contain an explanation of current Colorado laws including:
   a. minor permit issuance;
   b. BTW requirements; and
   c. requirements for licensure.

H. Internet programs will be monitored to ensure applicants had the opportunity to review the curriculum for the required number of hours prior to issuance of a TPE.

I. Each internet ~~chapte~~module/section must have a question embedded in it that does not allow progression if a student does not correctly answer the embedded question.

J. After two failed attempts to pass a test/quiz, students must review previous material.

K. A final test must be administered prior to entering a TCS. Test questions must come from a pool of questions that are scrambled each time a student takes a test or quiz.

L. Students must be shown the correct answers to each question they missed on tests and quizzes prior to re-testing.

M. Students must receive a correct quiz/test score of at least 80% or higher for each module/section before being allowed to go to the next module/section, and students must receive a final test score of 80% or higher before being issued a TPE.

(303) EDAP/DAP PROGRAMS

A. All entities that teach the EDAP/DAP for the purpose of qualifying students for a Colorado minor's instruction permit must be a CCDS and, except as otherwise provided in subsection 201(b) of this rule, meet CCDS curriculum and statutory requirements.

B. DAP must be approved through the National Safety Council and remain in good standing with the NSC rules, regulations, and teaching standards, and must be provided by a CCDS and meet CCDS curriculum and statutory requirements.

C. Students must be 15 years and 6 months of age before completing an approved EDAP/DAP.

(304) ADVERTISING

A. Advertisements and CCDS employees must not state or imply that a CCDS can issue, or guarantee the issuance of, a Colorado driver license or permit.

B. Advertisements and CCDS employees must not state or imply that a CCDS, or the employee, has influence over the Department in the issuance of a Colorado driver license or permit.

C. No CCDS, BOST Tester, BOSTO or CCDS employee or agent is permitted to solicit or advertise on the premises of a Colorado driver license office.

D. Use of the Colorado State seal/logo by a CCDS is strictly prohibited.

E. CCDSs must not advertise a business practice that violates any Colorado Revised Statute or rule, or regulation.

(305) CONTRACTS

A. All contracts for driver education between a CCDS and any individual or entity must contain, at a minimum, the following:

   a. CLASSROOM INSTRUCTION: package rate, the available dates or the website where dates can be found, times and length of each lesson, and the total number of hours of instruction;

   b. INTERNET INSTRUCTION~~OR HOME STUDY~~: mandated completion date if any, the total cost, and a telephone contact number and the times technical and/or informational help is available;

   c. BEHIND-THE-WHEEL LABORATORY: package rate, the length of each lesson, the total number of hours, and the rate for any vehicle charges. Cancellation or rescheduling policies must be included. Contracts must extend for at least 12 months from the date of permit issuance;

B. All contracts for driver education and testing must contain:

   a. a statement that reads: “This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein are not binding on either the school or the student.”

   b. a statement that reads: “Under this agreement an instructor may not provide behind-the-wheel training to more than two individual students per session.”

   c. a copy of CCDS/parent contracts used for driver education and testing must be provided to the Department in digital format.

(400) BOSTO AND BOST CERTIFICATION

A. A CCDS that is listed as a full-time school (teaches required 30 hours of curriculum and offers six- hours of BTW instruction for at least 20 hours per week) with the Department may apply for certification as a BOSTO. Testing must be equal to the training and examination offered by the Department. Section 42-2- 111(1) (b), C.R.S.

B. Before applying for BOSTO certification, a CCDS must issue ~~25~~ 30 student classroom TCS Statements and ~~ten~~ 30 six-hour BTW TPE Statements for students under the age of 18.

C. BOSTO certifications must be renewed annually before the current certification expires.

D. To renew a BOSTO certification, a CCDS must demonstrate that it has provided 30 hours of classroom training in driver education for at least 50 students and six-hours BTW completion for 25 students under the age of 18 for the preceding Fiscal Year. The Department will not renew the BOSTO written and drive testing privileges of a CCDS until it meets such requirements. ~~A CCDS in a rural area with limited population may apply for a variance.~~

E. Owning or operating a CCDS does not confer certification to administer the BOSW or BOSD for the State of Colorado. BOSW or BOSD can only be administered by a CCDS certified as BOSTO by the Department.

F. Requests for training and certification as a BOST Tester:

a. must be submitted by completing a typed DR 2068 BOST/RST/Continuing Education Training Registration Form;

~~b. each CCDS employee seeking training and certification as a BOST Tester must:~~

~~i. be at least 21 years of age; and~~

~~ii. have a valid Colorado driver license; and~~

~~1. must not have a personal driving record showing the accumulation of eight or more points or a suspension or revocation of driving privileges in the preceding three-years.~~

G. All TCSs must be kept by the CCDS in a secure location and remain under the control of the CCDS.

H. Upon successful completion of the driving skills tester training course by a Certified Employee, and a CCDS having met all additional company training and Department requirements, the Department may certify a CCDS as a BOSTO and a CCDS's employee as a BOST Tester.

I. A CCDS must have at least one employee certified as a BOST Tester to maintain BOSTO certification.

J. In the event the BOSTO certification for a CCDS is not renewed, or is revoked or suspended, all individual BOST Tester certifications for that BOSTO will be canceled.

K. A CCDS may request their BOSTO certification or the BOST Tester certification of any employee be canceled by notifying the Department in writing. Cancellation of a certification does not nullify any of the terms of the contract between the CCDS and the Department.

L. CCDSs must ensure that all their BOST Testers continue to meet the training and qualification standards required to conduct BOST tests. Failure of a tester to attend scheduled training may result in suspension of testing privileges.

M. CCDSs must ensure that each BOST Tester they employ follows the Department's standards for administering BOSTs.

N. Written knowledge and driving skill tests administered by a BOST Tester must be equal to the training and examination conducted by the Department. Section 42-2-111(1)(b), C.R.S.

O. A BOSTO may be suspended from administering a BOSD, BOSW or both.

P. A BOST Tester may be employed by more than one CCDS certified as a BOSTO. A BOST Tester employed by more than one CCDS certified as a BOSTO will be issued a separate tester number for each CCDS employing the BOST Tester. A BOST Tester certification is valid only while the BOST Tester is employed by the CCDS listed on the certificate.

Q. The Department reserves the right to retest any student/applicant if an audit indicates that the test was not properly administered, or not administered at all.

R. A BOST Tester must use only their own login and password to access DRIVES.

S. A BOST Tester must not authorize any person to use his/her login or password.

T. A BOST Tester must refer the following applicants to a Colorado driver license office:

   a. an applicant requesting a required skills test upon completion of a rehabilitation program;

   b. an applicant requesting a DR 2252 (English) or DR 2273 (Spanish) Driver's License Written Examination after four failed attempts;

   c. an applicant with a valid license that does not have a letter from the Department requiring a test;

   d. an applicant whose permit or license is not valid;

   e. an applicant unable to produce a photo ID.

(401) THE BOSD (Basic Operator Skills Drive Test)

A. BOSD routes must be approved in writing by the Department prior to certification of a CCDS as a BOSTO. BOST Testers must administer the BOSD only on routes approved by the Department for the BOSTO employing the BOST Tester. BOSTOs must request and receive approval from the Department in writing for any changes to an approved drive route prior to administering a BOSD.

B. A BOSTO that has multiple physical teaching locations must request approval for each route prior to testing.

C. Testing on an approved test route must begin from an approved teaching location that offers at least 20 hours of BTW per week and a 30-hour curriculum class or by a BOSTO using an approved satellite testing location that may not be within 30 miles of any other BOSTO.

D. Two approved BOSD routes are required from each approved teaching location.

E. BOSTOs are required to maintain copies of approved drive routes in their files in the Department approved format.

F. BOST testers must use all routes on an equal basis. Any testing on a route not previously approved may result in suspension or revocation of the BOSTO and/or BOST Tester's certification.

G. Using approved testing routes as a "pre-test" or ~~as~~ during BTW as a practice test for students or teaching to the test may result in suspension or revocation of a BOST Tester's certification.

H. Only BOST Testers may administer the BOSD and sign the DR 2732 Basic Operator Driving Skill Test score sheet confirming test completion.

I. BOST Testers must complete all testing forms accurately and completely.

J. The BOSTO must ensure that BOST Testers complete all testing forms accurately and ensure information is entered into DRIVES accurately.

K. A Certified Employee entering test results to produce a TCS constitutes a representation by the Certified Employee that the applicant whose name is on the TCS took the BOSD.

L. BOSTOs must hold the State harmless from liability resulting from a BOST Tester's administration of the BOSD.

M. Prior to administering any BOSD, the BOST Tester administering the test must ensure applicants have a valid driving permit or license (with a letter from the Department requiring a test) in their immediate possession and the BOST Tester must validate the permit in DRIVES.

N. A road test is not allowed if an applicant does not meet statutory licensing requirements. Testing an applicant before they meet the statutory requirements and/or postdating a DR 2732 Basic Operator Driving Skill Test score sheet is grounds for suspension or revocation of BOST Tester's certification.

O. BOST Testers must verify that any Class R vehicle used for testing:

    a. is properly registered and insured. Both the insurance and the registration cards must be in the vehicle and match the vehicle identification numbers; insurance verification can be digital.

    b. has both front and rear license plates attached to the outside of the vehicle; or temporary tags must be visible from the back of the vehicle;

    c. has passed a safety inspection by the BOST Tester to ensure all necessary equipment is in safe operating order, and that the vehicle meets all applicable Colorado Revised Statutes for operation on a public roadway;

    d. is inspected for compliance with this subsection prior to every BOSD, regardless of who owns the vehicle; and

    e. is either registered to the BOSTO as a training vehicle for BTW training or a vehicle provided by the applicant.

P. Prior to administering a BOSD, a Certified Employee must complete the information section of the DR 2732 Basic Operator Driving Skill Test score sheet including the date of the test, the name of the applicant, the vehicle, the organization, the tester information, and the BOST Tester, after the instructions have been read verbatim, fill in the start time on the score sheet. Once the car has been secured at the end of the BOSD, the finish time and applicant's score must be written on the score sheet, even if the applicant has failed the test. No alterations can be made to the DR 2732 after the BOSD has been completed.

Q. Applicants and BOST Testers are prohibited from smoking/vaping, drinking, or eating during a BOSD. All electronic devices and cell phones must be silenced during the test.

R. BOST Testers must conduct a full BOSD in accordance with Colorado Revised Statutes, rules, contract, and BOST Standards. All tests must be recorded on DR 2732 Basic Operator Driving Skill Test score sheet provided by the Department.

S. BOSDs must be done during daylight hours. For purposes of this rule, daylight hours mean the period between one-half hour before sunrise and one-half hour after sunset.

T. After a BOSD is completed, the BOST Tester must immediately critique the applicant's performance on the test, in a location outside of the vehicle. If the applicant is a minor, the critique must be done in the presence of the parent/guardian if the parent/guardian is present.

U. Upon successful completion of a BOSD, a Certified Employee must immediately enter information into DRIVES and provide the applicant with the TPE. The Certified Employee must staple the TCS to the upper left of the DR 2732 Basic Operator Driving Skill Test score sheet.

V. BOST Testers must note all failures on an applicant's DR 2732 Basic Operator Driving Skill Test score sheet and ensure all failures are entered into DRIVES immediately after the test is completed.

W. An applicant under 18 years of age holding an out of state instruction permit may take one BOSD with a BOSTO on the permit if the minor has met the statutory requirements. An applicant 18 years of age or older with an out of state instruction permit cannot be tested by a BOST Tester.

X. A BOST Tester must not administer more than one complete BOSD per day to any applicant. Giving an applicant more than one BOSD per day may result in suspension of the tester's certification.

Y. No passengers, pets (service dogs excluded), or interpreters may be in a vehicle during BOSD. Occupants in a vehicle during a BOSD are limited to the applicant and the tester, with the following exceptions:

    a. A Department representative may be in the vehicle when an audit is being performed for quality assurance purposes; or

    b. Another BOST Tester may be in the vehicle for training and evaluation purposes, if prior notification was given to the Department.

Z. The TPE is valid for 180 days from the date of issue.

(402) THE BOSW (Basic Operator Skills Written Knowledge Test)

A. BOST Testers administering the BOSW must ensure the TPE is issued to the applicant upon completion of the BOSW.

B. BOST Testers administering the DR 2252 or DR 2273 Driver's License Written Examination:

    a. must administer BOSW only at a business location pre-approved by the Department;

    b. must ensure that applicants do not access any unauthorized assistance, including but not limited to, written material, cell phones, or electronic devices, or communicate with any unauthorized person while testing;

c. must require applicants to write their first and last name(s), date of birth, and the date of the BOSW in the information box provided on the BOSW, and interpreters, including BOST Testers acting as an interpreter, must write their first and last name(s) and driver license number on the back of the BOSW. The BOSW Tester administering the BOSW must print and sign certifying they have proctored the test;

d. must require a correct score of 80% or higher to pass;

e. must grade correctly using the score key when grading a DR 2252 or DR 2273 Driver's License Written Examination;

f. must use a red pen unless the BOSW is graded electronically;

g. may provide up to four DR 2252 or DR 2273 Driver's License Written Examinations per applicant in total including written examinations taken at other CCDSs. An applicant may not take more than two tests per day, regardless of whether it is at one location or separate locations. If an applicant fails four DR 2252 or DR 2273s, regardless of when or at which locations the DR 2252 or DR 2273s are completed, all subsequent paper DR 2252WE or DR ~~2273~~2252WESP Driver's License Written Examinations must be taken at a Department driver license office. The four-test limit does not apply to electronically completed BOSWs;

h. must ensure that if an applicant fails the first BOSW with the BOSTO, then all subsequent BOSWs must be a different version. If an applicant misses more than 50% of the questions on a first test attempt, the applicant must wait until the next day to test again; and

i. must ensure every BOSW result is entered into DRIVES immediately regardless of pass or fail upon completion of the BOSW.

C. Applicants may use an interpreter for the BOSW.

D. An interpreter must be at least 16 years old and show an unexpired driver license from any state in the United States.

E. The BOST Tester or other interpreter can interpret in the required language and can only interpret the questions and answer choices.

F. The BOSW must not be given to any applicant under the age of 14 years and 11 months.

G. BOSWs must not be used as "class final exam", "practice" or "pre" tests.

H. BOSWs may not be copied outside the physical facilities unless the BOSWs remain under the direct supervision and control of a BOSTO.

I. Test results must not be partially or fully entered until after a student has completed the BOSW.

J. BOST Testers administering the BOSW must periodically check with the Department to confirm they have the most current version of tests/keys.

K. BOSWs must be administered by a BOST Tester with a BOSW certification.

L. The BOST Tester whose name, signature and tester number are on the back of the DR 2252 (English) or DR 2273 (Spanish) Driver's License Written Examination must accurately grade the BOSW.

M. The TPE is valid for 180 days from the date of issue.

(403) BOST TESTER REQUIREMENTS

A. The Department will not renew the certification of BOST Tester who has not administered a minimum of 24 BOSDs each Fiscal Year.

   a. A BOST Tester who does not meet this minimum requirement prior to July 1st may be renewed if he/she successfully completes a one-day continuing education within the first six months of the next Fiscal Year.

   b. A BOST Tester who fails to successfully complete the continuing education within the first six months of the next Fiscal Year must successfully complete a two-day continuing education as a condition of renewal.

B. Failure to complete the minimum number of BOSDs will result in suspension of a tester's certification until successful completion of the required continuing education.

C. All BOST Testers must possess and maintain a valid unrestricted State of Colorado driver license prior to certification and be at least 21 years of age.

D. BOST Testers must recertify their BOSD certification with the Department every two calendar years. Failure to attend a Department continuing education class or recertifying event within a two-year period may result in suspension of a tester's certification until continuing education has been successfully completed. ~~Proof of continuing education must be kept by a BOSTO in the BOST Tester's file for periodic review by the Department.~~

E. BOST Testers cannot administer any BOST to a member of their immediate family. "Immediate family" is defined at section 42-1-102(43.5), C.R.S.

F. A potential BOSD Tester:

   a. must complete and pass the BOST training class;

   b. must ~~show proof~~ provide evidence of four shadow drives on each route the tester will be using for BOSDs ~~documented~~ accompanied by a typed DR 2069 Shadow Cover Page (all within three errors as documented by another BOST Tester); and

   c. must complete all Shadow Drives within six weeks of passing the BOST training class unless granted an extension under special circumstances.

G. To be eligible for a BOST class, a potential BOSD Tester must have conducted at least 24 hours of BTW training or been employed by a BOSTO for at least one year.

H. Applicants failing the BOSD with a BOST Tester must be re-tested by a different BOST Tester (The Department may waive this requirement upon request if the Department determines that this would be a hardship).

I. BOST Testers will be evaluated on their ability to meet Department grading standards for BOSDs. The evaluation may be conducted during an actual BOSD or a BOSD with a Department representative as the driver. BOST Testers must follow Department procedures, meet Department standards and must pass the evaluation with a score of 80% or higher. Failure to pass the evaluation will be grounds for the Department to require additional continuing education and/or suspension of the BOST Tester certification.

J. The Department may deny certification of an individual or revoke certification of a Certified Employee if they have been convicted of a felony, or any offense involving moral turpitude. Conviction includes a plea of guilty or nolo contendere or a deferred sentence, provided that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence. In determining whether to deny or revoke a certification, the Department will consider the factors contained in section 24-5-101(4), C.R.S.

(500) RECORDKEEPING AND REPORTING

A. CCDSs and BOSTOs must use only the most current version of Department forms and must account for all TCS, testing, and training forms.

B. Audited records must be stored securely for a period of three years. Records include all contracts, records of student enrollment, DR 2045 Attendance Records, DR 2046 Attendance Records, and DR 2052 Attendance Records, DR 2070 Student Drive Time Logs, DR 2252WE (English versions 1-4) and DR ~~2273~~ 2252WESP(Spanish versions 1-4) Driver's License Written Examinations, DR 2732 Basic Operator Driving Skill Test score sheets, progress reports, student TCSs, and control numbered forms previously issued by the Department.

C. Student/parent contracts, progress reports and student enrollment records may be stored electronically after they have been audited.

D. After three years all testing records must be shredded.

E. All required testing information must be entered into DRIVES immediately, including passed and failed examinations.

F. Training information (including driver education, EDAP/DAP, and BTW) must be entered into DRIVES within two business days of the student's completion.

G. All TCSs must be maintained in chronological (date) order by submitted date and separated by exam type.

H. CCDSs, BOSTOs, and Certified Employees are responsible for securing all blank training/testing forms, all TCSs, and passwords/logins associated with DRIVES.

I. Post-dating, pre-dating, pre-filling, or partial completion of any testing/training form is not allowed.

J. The CCDS is responsible for inaccurate/missing entries into DRIVES.

(600) AUDITING

A. CCDSs must allow the Department to observe classroom instruction and BTW training.

B. CCDSs are required to allow onsite inspections, examinations, and audits by a Department representative without prior notice in order to:

   a. review all required documentation, including, but not limited to, all TCSs, DR 2045 Attendance Records, DR 2046 Attendance Records, and DR 2052 Attendance Records, DR 2070 Student Drive Time Logs, DR 2252WE (English versions 1-4) and DR ~~2273~~ 2252WESP (Spanish versions 1-4) Driver's License Written Examinations and DR 2732 Basic Operator Driving Skill Test score sheets;

   b. observe classroom instruction;

   c. observe BTW instruction;

   d. inspect Class R vehicles;

   e. observe and score live road testing by a BOST Tester and compare pass/fail scores;

   f. test the skills of BOST Testers who administer the BOSD; and

   g. observe administration of the BOSW.

C. A CCDS must surrender all required documentation to the Department upon request. The CCDS may make copies and retain copies of such documentation.

D. Audits may be conducted at the CCDS's or BOSTO's office, the Department, or at another location as determined by DTE.

E. To assure that CCDSs and BOSTOs continue to meet the standards established by the Department, a Department representative will conduct on-site inspections, examinations, and audits as often as the Department deems necessary and without prior notice, to review all required documentation, including but not limited to, contracts, student enrollment and progress records, DR 2045 Attendance Records, DR 2046 Attendance Records, and DR 2052 Attendance Records, DR 2070 Student Drive Time Logs, student completion records, classroom facilities, vehicles, and DR 2252WE (English versions 1-4), DR ~~223~~ 2252WESP(Spanish versions 1-4) Driver's License Written Examinations, and DR 2732 Basic Operator Driving Skill Test score sheets. Records will be checked for accuracy and completeness, including, but not limited to, missing TCSs and, in the case of TCSs, for chronological filing sequence by submitted date.

F. During Department audits, CCDSs and BOSTOs must cooperate with the Department, allow access to testing areas and routes, and supply student names and testing records, results, and any other regulated items as requested by the Department.

G. CCDS records must be accessible during the CCDS's normal business hours and made available to a Department representative upon request.

H. A CCDS must provide a TCS for each DRIVES entry with attached testing/training forms immediately if requested by the Department.

I. A CCDS must sign and return any audit report within ten days of receipt.

(700) CERTIFICATION RENEWAL

A. CCDS and Certified Employee certifications must be renewed annually on or before June 30th.

B. CCDS contracts with the Department are subject to annual renewal.

C. Renewal applications are due on June 1st of each calendar year. Failure to submit a sufficient application on or before June 1st may result in a CCDS's or BOSTO's or BOST Tester's certification not being renewed, and the Department will not honor exams entered into DRIVES by the CCDS, BOSTO, or BOST Tester on or after July 1st.

D. Renewal applications must include a breakdown of the price of each package offered by the CCDS or BOSTO.

(800) SUSPENSION/ REVOCATION/ CESSATION OF BUSINESS

A. After a notice and hearing pursuant to the State Administrative Procedure Act [sections 24-4-101, et. seq., C.R.S.], a certification(s) may be suspended or revoked for violations of any applicable Colorado Revised Statute, Rule, Regulation, contract obligation, including but not limited to any of the following:

   a. Failure to return all copies of written knowledge tests and keys, certifications, and any testing/training documents within ten days of cessation of business;

   b. Failure to immediately enter testing results into DRIVES;

   c. Failure to enter training results into DRIVES within two business days of completion;

   d. Failing to comply with the vehicle registration, insurance, surety bond, and equipment requirements of BTW Training;

   e. Refusing to be audited;

   f. Failure to address and/or correct deficiencies found in a previous audit or failing two or more audits. The Department's failure to take action based on an audit does not waive the Department's authority to take action later based on that audit;

   g. Supplying false information to the Department, or fraudulent testing or the fraudulent use of testing/training forms and/or TCSs;

   h. Omitting any test requirement from a BOSW or BOSD;

   i. Participation in any illegal activity related to driver licensing; and

   j. Incorrectly entering a test as a pass when it should have been a fail or entering a fail when it should have been a pass.

B. Any information obtained by the Department concerning illegal or fraudulent activity concerning, but not limited to written knowledge or driving skills testing, will be referred to the appropriate law enforcement authority.

C. If an applicant's testing was improper, illegal, or fraudulent, the applicant's driver license or instruction permit may be canceled.

D. Where the Department has objective and reasonable grounds to believe and finds, upon a full investigation, that a CCDS, BOSTO, or BOST Tester has been guilty of deliberate and willful violation, or that the public health, safety, or welfare imperatively requires emergency action, and incorporates the findings in its order, it may summarily suspend the certification of the CCDS, BOSTO, or BOST Tester pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection, "full investigation" means a reasonable ascertainment of the underlying facts on which the Department action is based.

    a. Upon receipt of a summary suspension, a CCDS, BOSTO or BOST Tester must immediately cease all testing as directed. The Department will promptly institute proceedings for suspension or revocation pursuant to the Administrative Procedure Act.

E. Written complaints about a CCDS, BOSTO, or BOST Tester received by the Department may result in an investigation through the Department or the Motor Vehicle Investigative Unit.

F. If a CCDS is found to be in violation of the terms of its contract with the Department, then the contract between the Department and the CCDS may be terminated.

~~**(900) GRANDFATHER PROVISIONS**~~

~~Law enforcement agencies and rehabilitation providers who are certified as BOSTOs are exempt from the teaching requirements as outlined in this rule.~~

(950) INCORPORATION BY REFERENCE

A. 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.

Notice of Proposed Rulemaking

Tracking number

2023-00602

Department

200 - Department of Revenue

Agency

212 - Marijuana Enforcement Division

CCR number

1 CCR 212-3

Rule title

COLORADO MARIJUANA RULES

Rulemaking Hearing

Date

10/30/2023

Time

12:00 PM

Location

1707 Cole Blvd. Suite 300, Lakewood, CO 80401

Subjects and issues involved

The Division will retain a record of the initial proposed rules as part of the rulemaking record. The initial proposed rules available on the Divisions website are intended to provide interested persons with the initial proposed drafts of the permanent rules. Additional or new rules may also be added.
The Division intends to recommend to the State Licensing Authority for consideration the promulgation of new and amended rules on the subjects outlined below. This list includes implementing legislation passed during the 2023 legislative session; recommendations from the Science & Policy Work Forum; rules related to Marijuana Hospitality Businesses, revising and clarifying rules. This list is not exhaustive, and the State Licensing Authority may consider any additional rule or amendment to any rule.
In addition to the subject matters addressed in the initial proposed rules, the SLA will consider additional rules consistent with any subject matter needed to implement and interpret the Colorado Marijuana Code, and Article XVIII, Sections 14 and 16 of the Colorado Constitution.
The final proposed rules will be published on the Divisions website on October 23, 2023. Other relevant information regarding this rulemaking also will be posted on the Divisions website.

Statutory authority

The State Licensing Authority promulgates these rules pursuant to the authority granted in the Marijuana Code, Article XVIII, Section 16 of the Colorado Constitution, and section 24-4-103, C.R.S., of the State Administrative Procedure Act.

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COLORADO
Department of Revenue
Marijuana Enforcement Division

DRAFT RULE REVISIONS

Colorado Marijuana Rules
1 CCR 212-3

NOTES:

These proposed rule revisions were presented to the August 31, 2023 and September 18, 2023 stakeholder work groups.

Blue highlighting designates additional context that may assist stakeholders in understanding the proposed rule revision and intent of the proposed rule revision.

Part 1 – General Applicability

Basis and Purpose – 1-105

The statutory authority for this rule includes but is not limited to sections 44-10-102(3), 44-10-202(1)(c), and 44-10-701(2)(a), C.R.S. Unless such activity is authorized by the Colorado Constitution, article XVIII, Section 14 or Section 16, the Colorado Marijuana Code, section 25-1.5-106.5, C.R.S., or these rules, any Person who buys, Transfers, or acquires Regulated Marijuana outside the requirements of the Colorado Marijuana Code is engaging in illegal activity pursuant to Colorado law. This rule clarifies that those engaged in the business of possessing, cultivating, dispensing, Transferring, transporting, or testing Medical Marijuana or Retail Marijuana must be properly licensed to be in compliance with Colorado law. This Rule 1-105 was previously Rules M and R 101, 1 CCR 212-1 and 1 CCR 212-2.

1-105 – Engaging in Business

A. Except as authorized by the Colorado Constitution, article XVIII, sections 14 or 16, the Colorado Marijuana Code, or section 25-1.5-106.5, C.R.S., no person shall possess, cultivate, dispense, Transfer, transport, offer to sell, manufacture, or test Regulated Marijuana unless said person is duly licensed by the State Licensing Authority and approved by the relevant Local Jurisdiction(s) and/or licensed by the relevant Local Licensing Authority(-ies).

B. Public Health Orders and Executive Orders.

1. All Licensees, their agents, and their employees shall comply with any applicable public health orders issued by any agency of the State of Colorado including, but not limited to the Colorado Department of Public Health and Environment.

2. All Licensees, their agents, and their employees, shall comply with any and all executive orders issued by the Governor pursuant to the Governor's disaster emergency powers under section 24-33.5-704, C.R.S.

3. A violation of this Rule by a Licensee, or by any of the agents or employees of a Licensee, is a license violation affecting public safety, which may result in disciplinary action up to and including license revocation and summary suspension pursuant to sections 44-10-901(1), C.R.S. and 44-10-901(2), C.R.S., and these Rules.

Basis and Purpose – 1-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), C.R.S. The purpose of this rule is to clarify that each rule is independent of the others, so if one is found to be invalid, the remainder will stay in effect. This will give the regulated community confidence in the rules even if one is challenged. This Rule 1-110 was previously Rules M and R 102, 1 CCR 212-1 and 1 CCR 212-2.

1-110 – Severability

If any portion of the rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

Basis and Purpose – 1-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(j), and 44-10-103, C.R.S., and all of the Marijuana Code. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and is not intended to be a defined term, it is not capitalized. This Rule 1-115 was previously Rules M and R 103, 1 CCR 212-1 and 1 CCR 212-2.

Please Note: *The following revised and new definitions stem from the adoption of SB 23-271 and HB 23-1021. Not all definitions added in the SB 23-271 are reflected in these proposed rules. Revised and new definitions reflected below represent those terms that are utilized in the rules throughout Parts 2 - 8. Additionally, terms like "industrial hemp" and "industrial hemp product" have been revised throughout the rules to remove "industrial" in accordance with SB 23-271. Revisions may also address other typographical errors identified by MED.*

1-115 – Definitions

Definitions. The following definitions of terms, in addition to those set forth in section 44-10-103, C.R.S., apply to all rules promulgated pursuant to the Marijuana Code, unless the context requires otherwise:

"Accelerator Cultivator" means a Social Equity Licensee qualified to participate in the accelerator program established pursuant to the Marijuana Code and authorized to exercise the privileges of a Retail Marijuana Cultivation Facility on the premises of an Accelerator-Endorsed Retail Marijuana Cultivation Facility Licensee. The premises can be either the same premises or a separate Licensed Premises possessed by an Accelerator-Endorsed Licensee.

"Accelerator-Endorsed Licensee" means a Retail Marijuana Cultivation Facility Licensee, Retail Marijuana Products Manufacturer Licensee, or a Retail Marijuana Store Licensee who has, pursuant to these rules, been endorsed to host and offer technical and capital support to a Social Equity Licensee pursuant to the requirements of the accelerator program established pursuant to the Code.

"Accelerator Licensee" means an Accelerator Cultivator, Accelerator Manufacturer, or Accelerator Store.

"Accelerator Manufacturer" means a Social Equity Licensee qualified to participate in the accelerator program established pursuant to the Marijuana Code and authorized to exercise the privileges of a Retail Marijuana Products Manufacturer on the premises of an Accelerator-Endorsed Retail Marijuana Products Manufacturer Licensee. The premises can be either the same premises or a separate Licensed Premises possessed by an Accelerator-Endorsed Licensee.

"Accelerator Store" means a Social Equity Licensee qualified to participate in the accelerator program established pursuant to the Marijuana Code and authorized to exercise the privileges of a Retail Marijuana Store on the premises of an Accelerator-Endorsed Retail Marijuana Store Licensee. The premises can be either the same premises or a separate Licensed Premises possessed by an Accelerator-Endorsed Licensee.

"Acquire," when used in connection with the acquisition of an Owner's Interest of a Regulated Marijuana Business, means obtaining ownership, Control, power to vote, or sole power of disposition of the Owner's Interest, directly or indirectly through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession or other means.

"Acting in Concert" means knowing participation in a joint activity or interdependent conscious parallel action toward a common goal, whether or not pursuant to an express agreement.

"Additive" means any non-marijuana derived substance added to Regulated Marijuana to achieve a specific technical and/or functional purpose during processing, storage, or packaging. Additives may be direct or indirect. Direct additives are used to impart specific technological or functional qualities. Indirect additives are not intentionally added but may be present in trace amounts as a result of processing, packaging, shipping, or storage. Botanically Derived Compounds which have been isolated or enriched and subsequently added back into cannabis products are additives.

"Adverse Health Event" means any untoward health condition or occurrence associated with the use of marijuana—this could include any unfavorable and unintended sign (including a hospitalization, emergency department visit, medical visit, abnormal laboratory finding, outbreak, death [non-motor vehicle]), symptom, or disease temporally associated with the use of a marijuana product, and may include concerns or reports on the quality, labeling, or possible adverse reactions to a specific marijuana (or hemp) product Transferred or manufactured at a Regulated Marijuana Business.

"Adverse Weather Event" means:

a. Damaging weather, which involves a drought, a freeze, hail, excessive moisture, excessive wind, or a tornado; or

b. An adverse natural occurrence, which involves an earthquake, wildfire, or flood.

"Advertising" means the act of providing consideration for the publication, dissemination, solicitation, or circulation, of visual, oral, or written communication, to directly induce any Person to patronize a particular Medical Marijuana Business or Retail Marijuana Business, or to purchase particular Regulated Marijuana. "Advertising" does not include packaging and labeling, Consumer Education Materials, or Branding.

"Affiliate" of, or Person affiliated with, a specified Person, means a Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

"Alarm Installation Company" means a Person engaged in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in a Licensed Premises.

"Alternative Use Designation" means a designation approved by the State Licensing Authority, permitting a Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer to manufacture and Transfer Alternative Use Product.

"Alternative Use Product" means Regulated Marijuana that has at least one intended use that is not included in the list of intended uses in Rule 3-1015(B). Alternative Use Product may raise public health concerns that outweigh approval of the Alternative Use Product, or that require additional safeguards and oversight. Alternative Use Product cannot be Transferred except as permitted by Rule 5-325 or Rule 6-325 after obtaining an Alternative Use Designation. Rule 5-325 permits a Medical Marijuana Products Manufacturer to Transfer Alternative Use Product to a Medical Marijuana Testing Facility prior to receiving an Alternative Use Designation. Rule 6-325 permits a Retail Marijuana Products Manufacturer to Transfer Alternative Use Product to a Retail Marijuana Testing Facility prior to receiving an Alternative Use Designation. Except where the context otherwise clearly requires, rules applying to Regulated Marijuana Concentrate or Regulated Marijuana Product apply to Alternative Use Product.

"Applicant" means a Person that has submitted an application for licensure, permit, or registration, or for renewal of licensure, permit, or registration, pursuant to these rules that was accepted by the Division for review but has not been approved or denied by the State Licensing Authority.

"Approved Training Program" means a responsible vendor program that received approval from the Division prior to being offered to a Licensee.

"Audited Product" means a Regulated Marijuana Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration. Audited Product types may raise public health concerns requiring additional safeguards and oversight. These product types may only be manufactured and Transferred by a Medical Marijuana Products Manufacturer in strict compliance with Rule 5-325 or Retail Marijuana Products Manufacturer in strict compliance with Rule 6-325. Prior to the first Transfer of an Audited Product to a Medical Marijuana Store, Medical Marijuana Cultivation Facility that has a Centralized Distribution Permit, Retail Marijuana Store or Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit, the Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer shall submit to the Division and, if applicable, to the Local Licensing Authority or Local Jurisdiction an independent third-party audit verifying compliance with Rule 5-325 or Rule 6-325. All rules regarding Regulated Marijuana Product apply to Audited Product except where Rules 5-325, 6-325, 4-115, 3-1010, and 3-1015 apply different requirements.

"Bad Actor" means a Person who:

a. Has been convicted, within the previous ten years (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

   i. In connection with the purchase or sale of any Security;

   ii. Involving the making of any false filing with the Federal Securities Exchange Commission; or

   iii. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of Securities;

b. Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within the previous five years, that restrains or enjoins such Person from engaging or continuing to engage in any conduct or practice:

   i. In connection with the purchase or sale of any Security;

ii. Involving the making of any false filings with the Federal Securities Exchange Commission; or

iii. Arising out of conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of Securities:

c. Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

i. Bars the Person from:

A. Association with an Entity regulated by such commission, authority, agency, or officer;

B. Engaging in the business of Securities, insurance, or banking; or

C. Engaging in savings association or credit union activities; or

ii. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the previous ten years;

d. Is subject to an order of the Federal Securities Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934, or section 203(e) or (f) of the Investment Advisers Act of 1940 that:

i. Suspends or revokes such Person's registration as a broker, dealer, municipal securities dealer, or investment adviser;

ii. Places limitations on the activities, functions or operations of such Person; or

iii. Bars such Person from being associated with any Entity, or from participating in the offering of any Penny Stock;

e. Is subject to any order of the Federal Securities Exchange Commission entered within the previous five years that orders the Person to cease and desist from committing or causing a violation or future violation of:

i. Any scienter-based anti-fraud provision of the federal securities laws, including without limitations section 17(a)(1) of the Securities Act of 1933, section 10(b) of the Securities Exchange Act of 1934 and 17 C.F.R. 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 and section 206(1) of the Investment Advisers Act of 1940, or any other rule or regulation thereunder; or

ii. Section 5 of the Securities Act of 1933.

f. Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a

registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

g. Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the federal Securities Exchange Commission that, within the previous five years, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

h. Is subject to a United States Postal Service false representation order entered with the previous five years, or is subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

"Batch Number" means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned by a Medical Marijuana Cultivation Facility or Medical Marijuana Products Manufacturer to a specific Harvest Batch or Production Batch of Medical Marijuana, or by a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturer to a specific Harvest Batch or Production Batch of Retail Marijuana.

"Beneficial Owner" includes the terms "beneficial ownership", or "beneficially owns" and means:

a. Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

i. Voting power which includes the power to vote, or to direct the voting of, an Owner's Interest; and/or,

ii. Investment power which includes the power to dispose, or to direct the disposition of, an Owner's Interest.

b. Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose of effect of divesting such Person of beneficial ownership of an Owner's Interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Securities Act of 1933 shall be deemed for purposes of such sections to be the beneficial owner of such Owner's Interest.

c. All Owner's Interests of the same class beneficially owned by a Person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such Person.

d. Notwithstanding the provisions of paragraphs (a) and (c) of this rule:

i.

A. A Person shall be deemed to be the beneficial owner of an Owner's Interest, subject to the provisions of paragraph (b) of this rule, if that Person has the right to acquire beneficial ownership of such Owner's Interest, as defined in Rule 13d-3(a) (§ 240.13d-3(a)) within sixty days, including but not limited to any

right to acquire: (1) Through the exercise of any option, warrant or right; (2) through the conversion of an Owner's Interest; (3) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (4) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires an Owner's Interest or power specified in paragraphs (d)(i)(A)(1), (2) or (3), of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the Owner's Interests which may be acquired through the exercise or conversion of such Owner's Interests or power. Any Owner's Interests not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding Owner's Interests of the class owned by such Person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

B. Paragraph (d)(i)(A) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying Owner's Interests even though the option, warrant, right or convertible Owner's Interests is of a class of equity Owner's Interest, as defined in § 240.13d-1(i), and may therefore give rise to a separate obligation to file.

ii. A member of a national securities exchange shall not be deemed to be a beneficial owner of an Owner's Interest held directly or indirectly by it on behalf of another Person solely because such member is the record holder of such Owner's Interests and, pursuant to the rules of such exchange, may direct the vote of such Owner's Interests, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the Owner's Interests to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

iii. A person who in the ordinary course of his business is a pledgee of Owner's Interests under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged Owner's Interests until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged Owner's Interests will be exercised, provided, that:

A. The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b);

B The pledgee is a Person specified in Rule 13d-1(b)(ii), including Persons meeting the conditions set forth in paragraph (G) thereof; and

C The pledgee agreement, prior to default, does not grant to the pledgee;

1. The power to vote or to direct the vote of the pledged Owner's Interests; or

2. The power to dispose or direct the disposition of the pledged Owner's Interests, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the Securities Act of 1933.

iv. A Person engaged in business as an underwriter of Owner's Interests who acquires Owner's Interests through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such Owner's Interests until the expiration of forty days after the date of such acquisition.

"Blank Check Company" means an Entity that:

a. Is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other Entity or Person; and

b. Is issuing Penny Stock.

"Botanically Derived Compounds" are organic chemicals that typically have a high vapor pressure at room temperature and are likely to be dispersed into the air. Botanically Derived Compounds include, but are not limited to terpenes, terpenoids, ketones, esters, and other molecules which are naturally occurring in plants and are used to affect the flavor and aroma of Regulated Marijuana.

"Branding" means promotion of a Regulated Marijuana Business's brand through publicizing the Regulated Marijuana Business's name, logo, or distinct design feature of the brand.

"Cannabinoid" means any of the chemical compounds that are the active principles of marijuana.

"Centralized Distribution Permit" means a permit issued to a Medical Marijuana Cultivation Facility pursuant to section 44-10-502, C.R.S., or a Retail Marijuana Cultivation Facility pursuant to section 44-10-602, C.R.S., authorizing temporary storage of Medical Marijuana Concentrate and Medical Marijuana Product received from a Medical Marijuana Products Manufacturer or Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Medical Marijuana Stores or Retail Marijuana Stores. For purposes of a Centralized Distribution Permit only, the term "commonly owned" means at least one natural person has a minimum of five percent ownership in both the Medical Marijuana Cultivation Facility possessing the Centralized Distribution Permit and the Medical Marijuana Store, or in both the Retail Marijuana Cultivation Facility possessing the Centralized Distribution Permit and the Retail Marijuana Store.

"Child-Resistant" means special packaging that is:

a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16

C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995). Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of the applicable federal regulations, which is available to the public;

b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material; and

c. Resealable for any product intended for more than a single use or containing multiple servings.

"Commercially Reasonable Royalty" means a right to compensation in the form of a royalty payment for the use of intellectual property with a direct nexus to the cultivation, manufacture, Transfer or testing of Regulated Marijuana. A Commercially Reasonable Royalty must be limited to specific intellectual property the Commercially Reasonable Royalty interest owns or is otherwise authorized to license or to a product or line of products. A Commercially Reasonable Royalty must not cause reasonable consumer confusion or violate any federal copyright, trademark or patent law or regulation will not be approved. To determine whether the Commercially Reasonable Royalty is reasonable, the Division will consider the totality of the circumstances, including but not limited to the following factors:

a. The percentage of royalties received by the recipient for the licensing of the intellectual property.

b. The rates paid by the Licensee for the use of other intellectual property.

c. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or non-restricted in terms of territory or with respect to whom the product may be sold.

d. The licensor's established policy and marketing program to maintain an intellectual property monopoly by not licensing others or by granting licenses under special conditions designed to preserve that monopoly.

e. The commercial relationship between the recipient and Licensee, such as, whether they are competitors in the same territory in the same line of business.

f. The effect of selling the intellectual property in promoting sales of other products of the Licensee; the existing value of the intellectual property to the recipient as a generator of sales of his non-intellectual property items; and the extent of such derivative sales.

g. The duration of the term of the license for use of the intellectual property.

h. The established or projected profitability of the product made using the intellectual property; its commercial success; and its current popularity.

i. The utility and advantages of the intellectual property over products or businesses without the intellectual property.

j. The nature of the intellectual property; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the intellectual property.

k. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the intellectual property.

l. The portion of the realizable profit that should be credited to the intellectual property as distinguished from non-intellectual property elements, the manufacturing process, business risks, or significant features or improvements added by the Licensee.

"Consumer Education Materials" means any informational materials that seek to educate consumers about Regulated Marijuana generally, including but not limited to education regarding the safe consumption of marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Products, provided it is not distributed or made available to individuals under twenty-one years of age.

"Consumption Area" means a designated and secured area within the Licensed Premises of a Licensed Hospitality Business where consumers can use and consume marijuana and where no one under the age of 21 is permitted. A Consumption Area may, but is not required to, be part of a Restricted Access Area.

"Container" means the receptacle directly containing Regulated Marijuana that is labeled according to the requirements in the 3-1000 Series Rules.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting Owner's Interests, by contract, or otherwise. This definition of Control includes Controls, Controlled, Controlling, Controlled by, and under common Control with.

"Controlling Beneficial Owner" or "CBO" means a Person that satisfies one or more of the following criteria:

a. A natural person, an Entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, a trust, the trustee of a trust, a Publicly Traded Corporation, or a Qualified Private Fund that is not a Qualified Institutional Investor:

i. Acting alone or Acting In Concert, that owns or Acquires Beneficial Ownership of ten percent or more of the Owner's Interest of a Regulated Marijuana Business;

ii. That is an Affiliate that Controls a Regulated Marijuana Business and includes, without limitation, any Manager; or

iii. That is otherwise in a position to Control the Regulated Marijuana Business except as authorized in section 44-10-506 or 44-10-606, C.R.S.; or

b. A Qualified Institutional Investor acting alone or Acting In Concert that owns or Acquires Beneficial Ownership of more than thirty percent of the Owner's Interest of a Regulated Marijuana Business.

c. Unless the context otherwise requires, the defined term Controlling Beneficial Owner includes Direct Beneficial Interest Owner.

"Corrective Action" means a reactive action implemented to eliminate the root cause of a Nonconformance and to prevent recurrence.

"Court Appointee" means a Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person; acting in accordance with section 44-10-401(3), C.R.S., and these rules; and authorized by court order to take possession of, operate, manage, or control a licensed Regulated Marijuana Business.

"Covered Securities" means:

a. A Security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of the Securities Act of 1933 that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or a Security of the same issuer that is equal in seniority or that is a senior Security to a Security designated as qualified for trading in the national market system.

b. A Security issued by an investment company that is registered, or that has filed a registration statement under the federal Investment Company Act of 1940.

c. A Security as defined by the Federal Securities Exchange Commission by rule pursuant to 15 U.S.C. §77r(b)(3).

d. A Security pursuant to 15 U.S.C. §77r(b)(4).

"Decontamination" means the process of neutralization or removal of dangerous substances or other contaminants from regulated marijuana without changing the product type of the Regulated Marijuana.

"Delivery Motor Vehicle" means any self-propelled vehicle that is designed primarily for travel on the public highways, that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle that is used for delivery of Regulated Marijuana to patients or consumers; except that the term does not include electric assisted bicycles, wheelchairs, or vehicles moved solely by human power.

"Denied Applicant" means any Person whose application for licensure, permit, or registration pursuant to the Marijuana Code has been denied, any Person whose application for a responsible vendor program has been denied, or any Licensee whose application for any of the following non-exhaustive list has been denied: An initial license application pursuant to Rule 2-220, a renewal application pursuant to Rule 2-225, the request for a finding of suitability pursuant to Rule 2-235, a change of owner pursuant to Rule 2-245; a change of location of the Licensed Premises pursuant to Rule 2-255; a change, alteration, or modification of the Licensed Premises pursuant to Rule 2-260; or a production management tier increase request pursuant to Rule 5-225 or 6-220.

"Department" means the Colorado Department of Revenue.

"Designated Test Batch Collection Area" means an area that has been designated within the Limited Access Area of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Medical Marijuana Products Manufacturer that is under surveillance and used for purposes of organizing and combining Sample Increments to create Test Batches, and which has been cleaned and sanitized prior to preparing Test Batches.

"Designated Test Batch Collector" means an Owner Licensee or an Employee Licensee who has been designated by a Regulated Marijuana Business and completed training required by Rule 4-110 to engage in Sample Increment Collection for the purpose of creating Test Batches.

"Director" means the Senior Director of the Marijuana Enforcement Division.

"Disproportionate Impacted Area" means a census tract in the top 15th percentile for that state in at least two of the following categories as measured by the United States Census Bureau:

a. the percent of residents in the census tract receiving public assistance;

b. the percent of residents in the census tract falling below the federal poverty level;

c. the percent of residents in the census tract failing to graduate from High School; and

d. the percent of residents in the census tract who are unemployed.

"Division" means the Marijuana Enforcement Division.

"Edible Medical Marijuana Product" means any Medical Marijuana Product for which the intended use is oral consumption, including but not limited to, any type of food, drink, or pill.

"Edible Retail Marijuana Product" means any Retail Marijuana Product for which the intended use is oral consumption, including but not limited to, any type of food, drink, or pill.

"Employee License" means a license granted by the State Licensing Authority pursuant to section 44-10-401, C.R.S., to a natural person who is not a Controlling Beneficial Owner. Any person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, or delivers Regulated Marijuana, who is authorized to input data into a Regulated Marijuana Business's Inventory Tracking System or point-of-sale system, or who has unescorted access in the Restricted Access Area or Limited Access Area must hold an Employee License. ~~Employee License includes both Key Licenses and Support Licenses~~.

"Entity" means a domestic or foreign corporation, cooperative, general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, limited partnership association, nonprofit association, nonprofit corporation, or any other organization or association that is formed under a statute or common law of the state of Colorado or any other jurisdiction as to which the laws of this state of Colorado or the laws of any other jurisdiction governs relations among owners and between the owners and the organization or association and that is recognized under the laws of the state of Colorado or the other jurisdiction as a separate legal entity.

"Executive Officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy-making functions for the Regulated Marijuana Business.

"Exit Package" means an Opaque bag or other similar Opaque covering provided at the point of sale, in which Regulated Marijuana already in a Container is placed. If Regulated Marijuana flower, trim, or seeds are placed into a Container that is not Child-Resistant, then the Exit Package must be Child-Resistant. The Exit Package is not required to be labeled in accordance with the 3-1000 Series Rules.

"Fibrous Waste" means any roots, stalks, and stems from a Regulated Marijuana plant.

"Final Agency Order" means an Order of the State Licensing Authority issued in accordance with the Marijuana Code and the State Administrative Procedure Act. The State Licensing Authority will issue a Final Agency Order following review of the Initial Decision and any exceptions filed thereto or at the conclusion of the declaratory order process. A Final Agency Order is subject to judicial review.

"Flammable Solvent" means a liquid that has a flash point below 100 degrees Fahrenheit.

"Flowering" means the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes of the stem.

"Food-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of propylene glycol, glycerin, butter, olive oil, or other typical cooking fats.

"Food-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats.

"Foreign Private Issuer" means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

a. More than 50 percent of the outstanding voting Securities of such issuer are directly or indirectly owned of record by residents of the United States; and

b. Any of the following:

i. The majority of the executive officers or directors are United States citizens or residents;

ii. More than 50 percent of the assets of the issuer are located in the United States; or

iii. The business of the issuer is administered principally in the United States.

"Genetic Material" means:

a. Small amounts or fragments of the marijuana plant that are unusable and unrecognizable as marijuana or a consumable marijuana product that are:

i. Intended for use for the purposes of propagation of plants in an artificial environment, also known as tissue culture; or

ii. Intended for the purposes of genetic testing, such as a hop latent viroid testing or plant sex testing.

b. Genetic Material does not mean:

i. Immature Plants;

ii. Marijuana seeds;

iii. Marijuana plant material that is used for the extraction of cannabinoids or terpenes, or the production of any consumable product or ingredient;

iv. Genetic Material not extracted directly from marijuana;

v. Genetic Material derived from artificially genetically modified organisms;

vi. Any substance derived from or intended for use in biosynthetic substances or processes.

"Good Cause" for purposes of denial of an initial, renewal, or reinstatement of a license, registration, or permit application, means:

a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Marijuana Code, any rules promulgated pursuant to the Marijuana Code, or any supplemental relevant state or local law, rule, or regulation;

b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the relevant local jurisdiction; or

c. The Licensee's Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

"Good Moral Character" means having a criminal history that demonstrates honesty, fairness, and respect for the rights of others and for the law.

"Greenhouse" means a hoop house or other structure with non-rigid walls that utilizes natural light, in whole or in part, for the cultivation of Regulated Marijuana.

"Harvest Batch" means a specifically identified quantity of processed Regulated Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time. A Harvest Batch may also include a Manicure Batch that was harvested prior to the creation of the Harvest Batch.

"Harvested Marijuana" means Regulated Marijuana flower reported as a package in the Inventory Tracking System or post-harvest Regulated Marijuana not including wet whole plant, trim, concentrate, waste, or Fibrous Waste that remains on the premises of the Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility or its off-premises storage location beyond 90 days from harvest.

"Heat/Pressure-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of heat and/or pressure. The method of extraction may be used by only a Medical Marijuana Products Manufacturer and can be used alone or on a Production Batch that also includes Physical Separation-Based Medical Marijuana Concentrate or Solvent-Based Medical Marijuana Concentrate.

"Heat/Pressure-Based Retail Marijuana Concentrate" means Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of heat and/or pressure. This method of extraction may be used by only a Retail Marijuana Products Manufacturer and can be used alone or on a Production Batch that also includes Physical Separation-Based Retail Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

"Hemp" means the plant Cannabis sativa L. and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis.

"Hemp Product" means a finished product that contains Hemp and that:

a. Is a cosmetic, a dietary supplement, a food, a food additive, or an herb;

b. Is intended for human use or consumption;

c. Contains any part of the Hemp plant, including naturally occurring cannabinoids, compounds, concentrates, extracts isolates, or resins;

d. Is produced from Hemp;

e. Contains no more than 1.75 milligrams of tetrahydrocannabinol (THC) per serving; and

f. Contains a ratio of cannabidiol (CBD) to THC of greater than or equal to 15 to one (15:1).

"Identification Badge" means a physical badge issued by the Division to any natural person possessing an Owner License or Employee License, used to verify the identity and license status of the natural persons on the Licensed Premises of a Regulated Marijuana Business.

"Identity Statement" means the name of the business as it is commonly known and used in any Advertising.

"Immature plant" means a nonflowering marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling and is in a cultivating container.

"Indirect Financial Interest Holder" means a Person that is not an Affiliate, a Controlling Beneficial Owner, or a Passive Beneficial Owner of a Regulated Marijuana Business and that:

a. Holds a Commercially Reasonable Royalty in exchange for a Regulated Marijuana Business's use of the Person's intellectual property;

b. Holds a Permitted Economic Interest that was issued prior to January 1, 2020, and that has not been converted into an Owner's Interest or holds any unsecured convertible debt option, option agreement or warrant that establishes a right for a Person to obtain an interest that might convert to an ownership interest in a Regulated Marijuana Business obtained after January 1, 2020;

c. Is a contract counterparty with a Regulated Marijuana Business, other than a customary employment agreement, that has a direct nexus to the cultivation, manufacture, sale, or testing of Regulated Marijuana, including, but not limited to, a lease of real property on which the Regulated Marijuana Business operates, a lease of equipment used in the cultivation, manufacture, or testing of Regulated Marijuana, a secured or unsecured financing agreement with the Regulated Marijuana Business, a security contract with the Regulated Marijuana Business, or a management agreement with the Regulated Marijuana Business, provided that no such contract compensates the contract counterparty with a percentage of revenue for profits of the Regulated Marijuana Business.

i. Any secured interest in Regulated Marijuana must expressly provide that it is subject to all required suitability and application requirements.

d. Unless the context otherwise requires, the defined term Indirect Financial Interest Holder includes Indirect Beneficial Interest Owner.

"Industrial Fiber Products" means intermediate or finished products made from Fibrous Waste that are not intended for human or animal consumption and are not usable or recognizable as Regulated Marijuana. Industrial Fiber Products include, but are not limited to, cordage, paper, fuel, textiles, bedding, insulation, construction materials, compost materials, and industrial materials.

"Industrial Fiber Products Producer" means a Person who produces Industrial Fiber Products using Fibrous Waste.

~~"Industrial Hemp" means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.~~

~~"Industrial Hemp Product" means a finished product containing Industrial Hemp that:~~

~~a. Is a cosmetic, food, food additive, or herb;~~

~~b. Is for human use or consumption;~~

~~c. Contains any part of the hemp plant, including naturally occurring Cannabinoids, compounds, concentrates, extracts, isolates, resins, or derivatives; and~~

~~d. Contains a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent.~~

"Industrial Hygienist" means a natural person who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university.

a. The special studies and training of such persons must be sufficient in the cognate sciences to provide the ability and competency to:

i. Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;

ii. Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

iii. Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

b. Any person who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in the definition above.

c. Any person who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in the definition above.

"Ineligible Issuer" means:

a. Any issuer that is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 that has not filed all reports and other materials required to be filed during the preceding 12 months, other than reports on Form 8-K required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S-3;

b. The issuer is, or during the past three years the issuer or any of its predecessors was:

i. A Blank Check Company;

ii. A Shell Company;

iii. An issuer of an offering of Penny Stock;

c. The issuer is a limited partnership that is offering and selling its Securities other than through a firm commitment underwriting;

d. Within the past three years, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the issuer, or a court-appointed a receiver, fiscal agent, or similar officer with respect to the business or property of the issuer subject to the following:

i. In the case of an involuntary bankruptcy in which a petition was filed against the issuer, ineligibility will occur upon the earlier to occur of:

A. 90 days following the date of the filing of the involuntary petition (if the case has not been earlier dismissed); or

B. The conversion of the case to a voluntary proceeding under federal bankruptcy or state insolvency laws; and

ii. Ineligibility will terminate if an issuer has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency, or receivership process;

e. Within the past three years, the issuer or any Entity that at the time was a subsidiary of the issuer was convicted of any felony or misdemeanor described in paragraphs (i) through (iv) of section 15(b)(4)(B) of the Securities Exchange Act of 1934;

f. Within the past three years, the issuer or any Entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that:

i. Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;

ii. Requires that the Person cease and desist from violating the anti-fraud provisions of the federal securities laws; or

iii. Determines that the Person violated the anti-fraud provisions of the federal securities laws;

g. The issuer has filed a registration statement that is the subject of any pending proceeding or examination under section 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order under section 8 of the Securities Act of 1933 within the past three years; or

h. The issuer is the subject of any pending proceeding under section 8A of the Securities Act of 1933 in connection with an offering.

"Infused Pre-Rolled Marijuana" means Regulated Marijuana that was produced by rolling, filling, or stuffing Harvested Marijuana flower, shake, and/or trim with Regulated Marijuana Concentrate(s) into paper, leaves, or an equivalent wrapper and is intended for consumption by inhalation.

"Ingredient" means any non-marijuana derived substance that is added to Regulated Marijuana to achieve a desired effect. The term Ingredient includes all Additives.

"Initial Decision" means a decision of a hearing officer in the Department following a licensing, disciplinary, or other administrative hearing. Either party may file exceptions to the Initial Decision. The State Licensing Authority will review the Initial Decision and any exceptions filed thereto, and will issue a Final Agency Order.

"Intoxicating Cannabinoid" means a cannabinoid that is classified as an intoxicating cannabinoid in section 44-10-209 or by the State Licensing Authority by rule, in coordination with the Department of Public Health and Environment.

"Inventory Tracking System" means the required seed-to-sale tracking system that tracks Regulated Marijuana from either the seed or immature plant stage until the Regulated Marijuana is sold to a patient at a Medical Marijuana Store or to a consumer at a Retail Marijuana Store, Transferred to a Medical Marijuana Testing Facility or Retail Marijuana Testing Facility, Transferred to a Sampling Manager, Transferred to an Industrial Fiber Products Producer, Transferred to a Pesticide Manufacturer, or destroyed by a Regulated Marijuana Business, or used in a Research Project by a Marijuana Research and Development Facility.

"Inventory Tracking System Trained Administrator" means an Owner Licensee of a Regulated Marijuana Business or an Employee Licensee employed by a Regulated Marijuana Business, each of whom has attended and successfully completed Inventory Tracking System training and has completed any additional training required by the Division.

"Inventory Tracking System User" means an Owner Licensee of a Regulated Marijuana Business or an Employee Licensee employed by a Regulated Marijuana Business, who is granted Inventory Tracking System User account access for the purposes of performing inventory tracking functions in the Inventory Tracking System. Each Inventory Tracking System User must have been successfully trained by an Inventory Tracking System Trained Administrator in the proper and lawful use of Inventory Tracking System.

"Kief" means a subset of Physical Separation-Based Marijuana Concentrate that consists of the resinous crystal-like trichomes that have been physically separated from Regulated Marijuana flower, shake, or trim that results in a higher concentration of cannabinoids.

"License" means a license, permit, or registration pursuant to the Marijuana Code.

"Licensed Hospitality Business" means a Marijuana Hospitality Business or Retail Marijuana Hospitality and Sales Business.

"Licensed Premises" means the premises specified in an application for a license pursuant to the Marijuana Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, or test Medical Marijuana, or to cultivate, manufacture, distribute, sell, store, transport, test, or allow the use or consumption of Retail Marijuana, in accordance with the provisions of the Marijuana Code, and these rules. Not all areas of the Licensed Premises are Limited Access Areas or Restricted Access Areas.

"Licensee" means any Person licensed, registered, or permitted pursuant to the Marijuana Code including an Owner Licensee and an Employee Licensee.

"Limited Access Area" means a building, room, or other contiguous area upon the Licensed Premises where Regulated Marijuana and Regulated Marijuana Products are grown, cultivated, manufactured, stored, weighed, packaged, sold, possessed for sale, Transferred, or processed for Transfer, under control of the Licensee, with access limited to only those persons licensed by the State Licensing Authority and those visitors Escorted by a person licensed by the State Licensing Authority. All areas of ingress or egress to limited access areas must be clearly identified as such by a sign as designated by the State Licensing Authority.

"Limit of Detection" or "LOD" means the lowest quantity of a substance that can be distinguished from the absence of that substance (a blank value) within a stated confidence limit (generally 1%).

"Limit of Quantitation" or "LOQ" means the lowest concentration at which the analyte can not only be reliably detected but at which some predefined goals for bias and imprecision are met.

"Liquid Edible Medical Marijuana Product" means an Edible Medical Marijuana Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

"Liquid Edible Retail Marijuana Product" means an Edible Retail Marijuana Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

"Local Jurisdiction" means a locality as defined in section 16 (2)(e) of Article XVIII of the state constitution.

"Local Licensing Authority" means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

"Manager" means:

a. A member of a limited liability company in which management is not vested in managers rather than members;

b. A manager of a limited liability company in which management is vested in managers rather than members;

c. A member of a limited partnership association in which management is not vested in managers rather than members;

d. A manager of a limited partnership association in which management is vested in managers rather than members;

e. A general partner;

f. An officer or director of a corporation, a nonprofit corporation, a cooperative, or a limited partnership association; or

g. Any Person whose position with respect to an Entity, as determined under the constituent documents and organic statutes of the Entity, without regard to the Person's title, is the functional equivalent of any of the positions described in this definition.

"Manicure Batch" means a Harvest Batch or a part of a Harvest Batch of a specifically identified quantity of processed Regulated Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time. A Manicure Batch consists of Regulated Marijuana that has been harvested from plants that have not yet been cut down and/or used in a Harvest Batch. A Manicure Batch may be considered a Harvest Batch by itself, or it may be combined with a Harvest Batch containing the same plant from which the Manicure Batch was created.

"Marijuana Code" means the Colorado Marijuana Code found at sections 44-10-101 *et seq.*, C.R.S.

"Marijuana Consumer Waste" means any component left after the consumption of a Regulated Marijuana Product, including but not limited to Containers, packages, cartridges, pods, cups, batteries, all-in-one disposable devices, and any other waste component left after the Regulated Marijuana is consumed.

"Marijuana Hospitality Business" means a facility, which may be mobile, licensed to permit the consumption of marijuana pursuant to article 10; rules promulgated pursuant to article 10; and the provisions of an enacted, initiated, or referred ordinance or resolution of the local jurisdiction in which the licensee operates.

"Marijuana Research and Development Facility" means a Person that is licensed pursuant to the Marijuana Code to grow, cultivate, manufacture, and possess Medical Marijuana, and to Transfer Medical Marijuana to another Marijuana Research and Development Facility all for limited research purposes authorized pursuant to section 44-10-507, C.R.S.

"Marketing Layer" means packaging in addition to the Container that is the outermost layer visible to the consumer at the point of sale. The Marketing Layer is optional, but if used by a Licensee in addition to the required Container, it must be labeled according to the requirements in the 3-1000 Series Rules.

"Material Change" means a change that the Licensee makes to their product's design, cultivation process, or manufacturing process that a Licensee knows, or should reasonably know, could affect the product's quality or ability to comply with the requirements set forth in these Rules including, but not limited to, intended use, testing, and product safety. This includes any change that would require a substantive revision to a Regulated Marijuana Business's standard operating procedures. *See* Rule 4-120(F)(1) for additional examples of Material Change.

"Medical Marijuana" means marijuana that is grown and sold pursuant to the provisions of article 10 and for a purpose authorized by section 14 of article XVIII of the state constitution but shall not be considered a nonprescription drug for purposes of section 12-42.5-102(21) or 39-26-717, or an

over-the-counter medication for purposes of section 25.5-5-322. If the context requires, Medical Marijuana includes Medical Marijuana Concentrate and Medical Marijuana Products.

"Medical Marijuana Business" means any of the following entities licensed pursuant to article 10: A Medical Marijuana Store, a Medical Marijuana Cultivation Facility, a Medical Marijuana Product Manufacturer, a Medical Marijuana Testing Facility, a Marijuana Research and Development Licensee, a Medical Marijuana Business Operator, or a Medical Marijuana Transporter.

"Medical Marijuana Business Operator" means an entity or person that is not an owner and that is licensed to provide professional operational services to a medical marijuana business for direct remuneration from the Medical Marijuana Business(es). A Medical Marijuana Business Operator is not, by virtue of its status as a medical marijuana business operator, a controlling beneficial owner or a passive beneficial owner of any medical marijuana business it operates.

"Medical Marijuana Concentrate" means a subset of Medical Marijuana that is separated from the medical marijuana plant and results in matter with a higher concentration of cannabinoids than naturally occur in the plant. Medical Marijuana Concentrate contains cannabinoids and may contain terpenes and other chemicals that are naturally occurring in medical marijuana plants that have been separated from medical marijuana. Medical Marijuana Concentrate may also include residual amounts of the types of solvents, as permitted by the marijuana rules. The State Licensing Authority may further define by rule subcategories of Medical Marijuana Concentrate and authorize limited ingredients based on the method of production of Medical Marijuana Concentrate. Unless the context otherwise requires, Medical Marijuana Concentrate is included when article 10 of the Colorado Revised Statutes refers to Medical Marijuana Product.

"Medical Marijuana Cultivation Facility" means a Person licensed pursuant to the Marijuana Code to operate a business as described in section 44-10-502, C.R.S.

"Medical Marijuana Product" means a product infused with Medical Marijuana and other Ingredients that is intended for use or consumption other than by smoking, including but not limited to edible product, ointments, and tinctures.

"Medical Marijuana Products Manufacturer" means a Person licensed pursuant to the Marijuana Code to operate a business as described in section 44-10-503, C.R.S.

"Medical Marijuana Store" means a Person licensed pursuant to the Marijuana Code to operate a business as described in section 44-10-501, C.R.S., and sells Medical Marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

"Medical Marijuana Testing Facility" means a public or private laboratory licensed and certified, or approved by the Division, to perform testing and research on Medical Marijuana.

"Medical Marijuana Transporter" means an entity or Person licensed to transport Medical Marijuana and Medical Marijuana Products from one Medical Marijuana Business to another Medical Marijuana Business and to temporarily store the transported Medical Marijuana and Medical Marijuana Products at its Licensed Premises, but is not authorized to sell Medical Marijuana or Medical Marijuana Products under any circumstances.

"Mobile Premises" means a Licensed Premises operated by a Marijuana Hospitality Business in a motor vehicle, which includes any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle; but does not include electrical assisted bicycles, electric scooters, low-power scooters, wheelchairs, or vehicles moved solely by human

power. A Marijuana Hospitality Business operating a Mobile Premises must comply with all requirements in Rule 6-940.

"Monitoring" means the continuous and uninterrupted attention to potential alarm signals that could be transmitted from a Security Alarm System located at a Regulated Marijuana Business Licensed Premises, for the purpose of summoning a law enforcement officer to the premises during alarm conditions.

"Monitoring Company" means a person in the business of providing security system Monitoring services for the Licensed Premises of a Regulated Marijuana Business.

"Multiple-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing more than 10 milligrams of active THC and no more than 100 milligrams of active THC. If the overall Edible Retail Marijuana Product unit for sale to the consumer consists of multiple pieces where each individual piece may contain less than 10 milligrams of active THC, yet in total all pieces combined within the unit for sale contain more than 10 milligrams of active THC, then the Edible Retail Marijuana Product shall be considered a Multiple-Serving Edible Retail Marijuana Product.

"Nonconformance" means a non-fulfillment of a requirement or departure from written procedures, work instructions, or quality system, as defined by the Licensee's written Corrective Action and Preventive Action procedures.

"Non-objecting Beneficial Owner" means a Beneficial Owner who gives permission to a financial intermediary to release their name and address to the company(ies) or issuer(s) in which they have bought Securities.

"Notice of Denial" means a written statement from the State Licensing Authority, articulating the reasons or basis for denial of a license application.

"Notice of Destruction" means a written statement from the State Licensing Authority, articulating the objective and reasonable grounds that the health, safety, or welfare of the public requires the destruction of embargoed Regulated Marijuana.

"Notice of Embargo" means a written statement from a Division investigator who has objective and reasonable grounds to believe identified Regulated Marijuana poses a threat to the health, safety, or welfare of the public and that cannot be Transferred, transported, or destroyed unless otherwise allowed under these Rules.

"Opaque" means that the packaging does not allow the product to be seen without opening the packaging material.

"Order to Show Cause" means a document from the State Licensing Authority alleging the grounds for imposing discipline against a Licensee's license.

"Owner Entity License" means a License issued to an Entity that is a Controlling Beneficial Owner of a Regulated Marijuana Business.

"Owner's Interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

"Owner License" means a License issued to a natural person who is a Controlling Beneficial Owner of a Regulated Marijuana Business or who is a Passive Beneficial Owner electing to be subject to licensure.

"Passive Beneficial Owner" means any Person Acquiring any Owner's Interest in a Regulated Marijuana Business that is not otherwise a Controlling Beneficial Owner or in Control.

"Penny Stock" means any equity security other than a Security:

a. That is a National Market System stock, provided that:

i. The Security is registered, or approved for registration upon notice of issuance, on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992; and the national securities exchange has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004; or

ii. The Security is registered, or approved for registration upon notice of issuance, on a national securities exchange, or is listed, or approved for listing upon notice of issuance on, an automated quotation system sponsored by a registered national securities association, that:

A. Has established initial listing standards that meet or exceed the following criteria:

1. The issuer shall have: (a) stockholders' equity of $5,000,000; (b) market value of listed Securities of $50 million for 90 consecutive days prior to applying for a listing (market value means the closing bid price multiplied by the number of Securities listed); or (c) net income of $750,000 (excluding non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

2. The issuer shall have an operating history of at least one year or a market value of listed Securities of $50 million (market value means the closing bid price multiplied by the number of Securities listed);

3. The issuer's stock, common or preferred, shall have a minimum bid price of $4 per share;

4. In the case of common stock, there shall be at least 300 round lot holders of the Security (a round lot holder means a holder of a normal unit of trading);

5. In the case of common stock, there shall be at least 1,000,000 publicly held shares and such shares shall have a market value of at least $5 million (market value means the closing bid price multiplied by the number of publicly held shares, and shares held directly or indirectly by an officer or director of the issuer and by any Person who is the Beneficial Owner of more than 10

percent of the total shares outstanding are not considered to be publicly held);

6. In the case of a convertible debt security, there shall be a principal amount outstanding of at least $10 million;

7. In the case of rights and warrants, there shall be at least 100,000 issued and the underlying security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this definition;

8. In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the company's common stock, at a specified price until a specified period of time), there shall be at least 100,000 issued and the underlying Security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this definition;

9. In the case of units (that is, two or more Securities traded together), all component parts shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this definition; and

10. In the case of equity Securities (other than common and preferred stock, convertible debt securities, rights and warrants, put warrants, or units), including hybrid products and derivative products, the national securities exchange or registered national securities association shall establish quantitative listing standards that are substantially similar to those found in paragraph (a)(ii) of this definition; and

B. Has established quantitative continued listing standards that are reasonably related to the initial listing standards set forth in paragraph (a)(ii) of this definition, and that are consistent with the maintenance of fair and orderly markets;

b. That is issued by an investment company registered under the Federal Investment Company Act of 1940;

c. That is a put or call option issued by the Options Clearing Corporation;

d. That has a price of five dollars or more;

i. For purposes of this paragraph (d):

A. A Security has a price of five dollars or more for a particular transaction if the Security is purchased or sold in that transaction at a price of five dollars or more, excluding any broker or dealer commission, commission equivalent, mark-up, or mark-down; and

B. Other than in connection with a particular transaction, a Security has a price of five dollars or more at a given time if the inside bid quotation is five dollars or more; provided, however, that if there is no such inside bid quotation, a Security has a price of five dollars or more at a given time if the average of three or more interdealer bid quotations at specified prices displayed at that time in an interdealer quotation system, by three or more market makers in the Security, is five dollars or more.

C. The term "inside bid quotation" shall mean the highest bid quotation for the Security displayed by a market maker in the Security on an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Federal Securities Exchange Act of 1934, or such other automated interdealer quotation system designated by the Federal Securities Exchange Commission for purposes of this definition, at any time in which at least two market makers are contemporaneously displaying on such system bid and offer quotation for the Security at specified prices.

ii. If a Security is a unit composed of one or more Securities, the unit price divided by the number of shares of the unit that are not warrants, options, rights, or similar Securities must be five dollars or more as determined in accordance with paragraph (d)(i), and any share of the unit that is a warrant, option, right, or similar security, or a convertible security, must have an exercise price or conversion price of five dollars or more;

e. That is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available provided that:

i. Price and volume of information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the national securities exchange;

ii. The Security is purchased or sold in a transaction that is effected on or through the facilities of the national securities exchange, or that is part of the distribution of the Security; and

iii. The Security satisfies the requirements of paragraphs (a)(i) or (a)(ii);

f. That is a security futures product listed on a national securities exchange or an automated quotation system sponsored by a registered national securities association; or

g. Whose issuer has:

i. Net tangible assets in excess of $2,000,000, if the issuer has been in continuous operation for at least three years, or $5,000,000 if the issuer has been in continuous operation for less than three years; or

ii. Average revenue of at least $6,000,000 for the last three years.

"Person" means a natural person, an estate, a trust, an Entity, or a state or other jurisdiction.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; except that the term "pesticide" does not include any article that is a "new animal drug" as designated by the United States Food and Drug Administration.

"Pesticide Manufacturer" means a Person who (1) manufactures, prepares, compounds, propagates, or processes any Pesticide or device or active ingredient used in producing a Pesticide; (2) who possesses an establishment registration number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; (3) who conducts research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Regulated Marijuana; (4) who has applied for and received any necessary license, registration, certifications, or permits from the Colorado Department of Agriculture, pursuant to the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.; (5) who is authorized to conduct business in the State of Colorado; and (6) who has physical possession of the location in the State of Colorado where its research activities occur. A Pesticide Manufacturer is neither a Regulated Marijuana Business, nor a Licensee.

"Physical Separation-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by separating Cannabinoids from Medical Marijuana through the use of physical separation by grinding, sifting, or a similar process and may use water, ice, or dry ice. Physical Separation-Based Medical Marijuana Concentrate does not include Solvent-Based Medical Marijuana Concentrate or Heat/Pressure-Based Medical Marijuana Concentrate.

"Physical Separation-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by separating Cannabinoids from Retail Marijuana through the use of physical separation by grinding, sifting, or a similar process and may use water, ice, or dry ice. Physical Separation-Based Retail Marijuana Concentrate does not include Solvent-Based Retail Marijuana Concentrate or Heat/Pressure-Based Retail Marijuana Concentrate.

"Pre-Rolled Marijuana" means Regulated Marijuana that was produced by rolling, filling, or stuffing Harvested Marijuana flower, shake, and/or trim into paper, leaves or an equivalent wrapper and is intended for consumption by inhalation.

"Pressurized Metered Dose Inhaler" means inhalable Regulated Marijuana Concentrate, which may be comprised of other Ingredients, and a pressurized propellant inside a device that administers a dose of an aerosolized composition.

"Preventive Action" means a proactive action implemented to eliminate the cause of a potential Nonconformance or other quality problem before it occurs.

"Processing Aid" means any non-marijuana derived substance used in the production of Regulated Marijuana to assist in extraction or manufacturing processes.

"Production Batch" means (a) any amount of Regulated Marijuana Concentrate of the same category and produced using the same extraction methods, standard operating procedures and an identical group of Harvest Batch(es) of Medical Marijuana or Retail Marijuana; or (b) any

amount of Regulated Marijuana Product of the same exact type, produced using the same Ingredients, standard operating procedures, and the same Harvest Batch(es) of Harvested Marijuana (single strain or multiple strain) and/or Production Batch(es) of Regulated Marijuana Concentrate; or (c) any amount of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana of the same exact type, produced using the same ingredients, standard operating procedures, and the same Harvest Batch(es) of Regulated Marijuana Concentrate.

"Professional Engineer" means a natural person who is licensed by the State of Colorado as a professional engineer pursuant to sections 12-25-101 *et seq.*, C.R.S.

"Proficiency Testing" means an assessment of the performance of a Medical Marijuana Testing Facility's or Retail Marijuana Testing Facility's methodology and processes. Proficiency Testing is also known as inter-laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent.

"Propagation" means the reproduction of Regulated Marijuana plants by seeds, cuttings, or grafting.

"Public Institution," for purposes of the 5-700 Series Rules, means any entity established or controlled by the federal government, a state government, or a local government or municipality, including but not limited to an institution of higher education or a public higher education research institution.

"Public Money," for purposes of the 5-700 Serie Rules, means any funds or money obtained by the holder from any governmental entity, including but not limited to research grants.

"Publicly Traded Corporation" means any Person other than an individual that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia or another country that authorizes the sale of marijuana that:

a. Has a class of Securities registered pursuant to 15 U.S.C. sec. 77a et seq., that:

   i. Constitutes Covered Securities; or

   ii. Is qualified and quoted on the OTCQX or OTCQB tier of the OTC markets if:

      A. The Person is then required to file reports and is filing reports on a current basis with the Federal Securities Exchange Commission pursuant to 15 U.S.C. sec. 78a et seq., as if the Securities constituted Covered Securities; and

      B. The Person has established and is in compliance with corporate governance measures pursuant to corporate governance obligations imposed on Securities qualified and quoted on the OTCQX tier of the OTC markets.

b. Is an Entity that has a class of Securities listed on the Canadian Securities Exchange, Toronto Stock Exchange, TSX Venture Exchange, or NEO Exchange, if:

   i. The Entity constitutes a Foreign Private Issuer whose Securities are exempt from registration pursuant to 15 U.S.C. sec. 78a et seq., pursuant to 17 CFR 240.12g3-2; and

ii. The Entity has been, for the preceding three hundred sixty-five days or since the formation of the Entity, in compliance with all governance and reporting obligations imposed by the relevant exchange on such Entity; or

c. Publicly Traded Corporation does not include:

i. An Ineligible Issuer, unless such Publicly Traded Corporation satisfies the definition of Ineligible Issuer solely because it is one or more of the following, and the Person is filing reports on a current basis with the Federal Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78a et seq., as if the Securities constituted Covered Securities, and prior to becoming a Publicly Traded Corporation, the Person for at least two years was licensed by the State Licensing Authority as a Regulated Marijuana Business with a demonstrated history of operations in the state of Colorado, and during such time was not subject to suspension or revocation of the business license:

A. a Blank Check Company;

B. an issuer in an offering of Penny Stock; or

C. a Shell Company.

ii. A Person disqualified as a Bad Actor.

"Qualified Institutional Investor" means:

a. A bank as defined in 15 U.S.C. sec. 78c (a)(6), if the bank is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

b. A bank holding company as defined in 12 U.S.C. sec. 1841 (a)(1), if the bank holding company is registered and current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

c. An insurance company as defined in 15 U.S.C. sec. 80a-2 (a)(17), if the insurance company is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

d. An investment company registered and subject to 15 U.S.C. sec. 80a-1, et seq., if the investment company is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

e. An employee benefit plan or pension fund subject to 29 U.S.C. sec. 1001 et seq., excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary or holding company licensee which directly or indirectly owns ten percent or more of a licensee;

f. A state or federal government pension plan; or

g. A group comprised entirely of persons specified in (a) through (g) of this definition; or

h. Any other entity identified by rule by the state licensing authority.

"Qualified Private Fund" means an issuer that would be an investment company, as defined in section 3 of the Federal Investment Company Act of 1940, but for the exclusions provided under sections 3(c)(1) or 3(c)(7) of that Act, and that:

a. Is advised or managed by an investment adviser as defined and registered pursuant to 15 U.S.C. sec. 80b-1 et seq., and for which the registered investment adviser is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder; and

b. Satisfies one or more of the following:

i. Is organized under the law of a state or the United States;

ii. Is organized, operated, or sponsored by a U.S. person, as defined under subsection 17 CFR 230.902(k), as amended; or

iii. Sells Securities to a U.S. person, as defined under subsection 17 CFR 230.902(k), as amended.

"Reduced Testing Allowance" means the allowance for a Regulated Marijuana Business to conduct less testing than otherwise required by Rules 4-120 and 4-125 upon demonstrating that standard operating procedures and production practices result in consistent passing test results over a time frame established in Rules 4-120 and 4-125.

"R&D Co-Location Permit" means a permit issued to a Marijuana Research and Development Facility authorizing it to co-locate with a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility pursuant to Rule 5-705. A separate R&D Co-Location Permit is required for each location at which a Marijuana Research and Development Facility seeks to share a single Licensed Premises.

"Reasonable Cause" means just or legitimate grounds based in law and in fact to believe that the particular requested action furthers the purposes of the Marijuana Code or protects the public safety.

"Regulated Marijuana" means Medical Marijuana and Retail Marijuana. If the context requires, Regulated Marijuana includes Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana Concentrate, and Retail Marijuana Product.

"Regulated Marijuana Business" means Medical Marijuana Businesses and Retail Marijuana Businesses.

"Regulated Marijuana Concentrate" means Medical Marijuana Concentrate and Retail Marijuana Concentrate.

"Regulated Marijuana Cultivation Facility" means a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and Accelerator Cultivator.

"Regulated Marijuana Products Manufacturer" means a Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, and Accelerator Manufacturer.

"Regulated Marijuana Product" means Medical Marijuana Product and Retail Marijuana Product.

"Regulated Marijuana Store" means a Medical Marijuana Store, Retail Marijuana Store, and Accelerator Store.

"Regulated Marijuana Testing Facility" means a Medical Marijuana Testing Facility and Retail Marijuana Testing Facility.

"Remediation" means the process of neutralization or removal of dangerous substances or other contaminants from regulated marijuana while changing the product type of the regulated marijuana.

"Resealable" means that the Container maintains its Child-Resistant effectiveness for multiple openings.

"Research Project" means a discrete scientific endeavor to answer a research question or a set of research questions. A Research Project must include a description of a defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date. The description must demonstrate that the Research Project will comply with all requirements in the 5-700 Series Rules – Marijuana Research and Development Facility. All research and development conducted by a Marijuana Research and Development Facility must be conducted in furtherance of an approved Research Project.

"Respondent" means a Person who has filed a petition for declaratory order that the State Licensing Authority has determined needs a hearing or legal argument, or a Licensee who is subject to an Order to Show Cause.

"Responsible Vendor Program Provider" means a Person offering an Approved Training Program, in accordance with section 44-10-1201, C.R.S., to Licensees seeking to be designated a responsible vendor.

"Restricted Access Area" means a designated and secure area within a Licensed Premises in a Medical Marijuana Store where Medical Marijuana is sold to patients or their caregiver, possessed for sale, and displayed for sale, and where no one without a valid patient registry card or that patient's caregiver is permitted, and 2) in a Retail Marijuana Store or a Retail Marijuana Hospitality and Sales Business where Retail Marijuana is sold to consumers, possessed for sale, and displayed for sale, and where no one under the age of 21 is permitted.

"Retail Food Establishment" means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. "Retail food establishment" does not mean:

a. Any private home;

b. Private boarding house;

c. Hospital and health facility patient feeding operations licensed by the department;

d. Child care centers and other child care facilities licensed by the department of human services;

e. Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed based of operation;

f. Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;

g. Motor vehicles used only for the transport of food;

h. Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and non-potentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;

i. Establishments that handle only non-potentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of the food within its original container or package;

j. Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;

k. Automated food merchandising enterprises that supply only prepackaged non-potentially hazardous food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering;

l. The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:

i. Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and

ii. Takes place in the county in which such nonprofit or charitable organization resides or is principally located.

m. A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the "Colorado Cottage Foods Act," section 25-4-1614, C.R.S.

"Retail Marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including but not limited to Retail Marijuana Concentrate, that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Business. "Retail Marijuana" does not include ~~industrial~~ hemp, nor does it include fiber produced from stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other Ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product. If the context requires, Retail Marijuana includes Retail Marijuana Concentrate and Retail Marijuana Product.

"Retail Marijuana Business" means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturer, a Marijuana Hospitality Business, a Retail Marijuana Hospitality and Sales Business, a Retail Marijuana Testing Facility, a Retail Marijuana Business Operator, and a Retail Marijuana Transporter.

"Retail Marijuana Business Operator" means an entity or person that is not an owner and that is licensed to provide professional operational services to a Retail Marijuana Businesses for direct remuneration from the Retail Marijuana Business.

"Retail Marijuana Concentrate" means a subset of Retail Marijuana that is separated from the retail marijuana plant and results in matter with a higher concentration of cannabinoids than naturally occur in the plant. Retail Marijuana Concentrate contains cannabinoids and may contain terpenes and other chemicals that are naturally occurring in Retail Marijuana plants that have been separated from Retail Marijuana. Retail Marijuana Concentrate may also include residual

amounts of the types of solvents, as permitted by the marijuana rules. The State Licensing Authority may further define by rule subcategories of Retail Marijuana Concentrate and authorize limited ingredients based on the method of production of Retail Marijuana Concentrate. Unless the context otherwise requires, Retail Marijuana Concentrate is included when article 10 of the Colorado Revised Statutes refers to Retail Marijuana Product.

"Retail Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package Retail Marijuana and sell Retail Marijuana to Retail Marijuana Stores, to Retail Marijuana Products Manufacturers, and to other Retail Marijuana Cultivation Facilities, but not to consumers.

"Retail Marijuana Hospitality and Sales Business" means a facility, which cannot be mobile, licensed to permit the consumption of only the retail marijuana or retail marijuana products it has sold pursuant to the provisions of an enacted, initiated, or referred ordinance or resolution of the local jurisdiction in which the licensee operates.

"Retail Marijuana Product" means a product that is comprised of Retail Marijuana and other Ingredients and is intended for use or consumption, such as, but not limited to, edible product, ointments and tinctures.

"Retail Marijuana Products Manufacturer" means an entity licensed to purchase Retail Marijuana; manufacture, prepare, and package Retail Marijuana Product; and Transfer Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product only to other Retail Marijuana Products Manufacturers, Retail Marijuana Stores, Retail Marijuana Hospitality and Sales Businesses and Pesticide Manufacturers.

"Retail Marijuana Store" means an entity licensed to purchase Retail Marijuana and Retail Marijuana Concentrate from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product and Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer, and to Transfer Retail Marijuana to Retail Marijuana Hospitality and Sales Businesses and to consumers.

"Retail Marijuana Testing Facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

"Retail Marijuana Transporter" means a Person licensed to transport Retail Marijuana from one Retail Marijuana Business to another Retail Marijuana Business or to a Pesticide Manufacturer, and to temporarily store the transported Retail Marijuana at its Licensed Premises, but is not authorized to sell, give away, buy, or receive complimentary Retail Marijuana under any circumstances. A Retail Marijuana Transporter does not include a Licensee that transports and distributes its own Retail Marijuana.

"RFID" means Radio Frequency Identification.

"Safe Harbor Hemp Product" means a hemp-derived compound or cannabinoid, whether a finished product or in the process of being produced, that is permitted to be manufactured for distribution, produced for distribution, packaged for distribution, processed for distribution, prepared for distribution, treated for distribution, transported for distribution, or held for distribution in Colorado for export from Colorado but that is not permitted to be sold or distributed in Colorado.

"Sample Increment" means a single portion or unit that is removed from a Harvest Batch or Production Batch by a Designated Test Batch Collector for the creation of a Test Batch. For Harvest Batches, a Sample Increment shall be 500 milligrams of flower or trim. For Regulated Marijuana Products, Audited Products, and Alternative Use Products, a Sample Increment shall

be a single serving of the product as defined by the Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer, but shall contain no more than 10 milligrams of active THC per serving for Edible Retail Marijuana Products. For Regulated Marijuana Concentrate, a Sample Increment shall be 250 milligrams of concentrate.

"Sample Increment Collection" means the gathering of Sample Increments to combine into a larger, composite Test Batch.

"Sample Plan" means a written, documented plan generated by Designated Test Batch Collector(s) in line with the Regulated Marijuana Business' Standard Operating Procedure for Sample Increment Collection.

"Sampling Manager" means an Owner Licensee or management personnel holding an Employee Licensee designated by a Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer to receive Transfers of Sampling Units pursuant to Rules 5-230, 5-320, 6-225, and 6-320.

~~"Sample Plan" means a written, documented plan generated by Designated Test Batch Collector(s) in line with the Regulated Marijuana Business' Standard Operating Procedure for Sample Increment Collection.~~

"Sampling Unit" means a unit of Regulated Marijuana Transferred to a Sampling Manager for purposes of quality control and product development pursuant to Rules 5-230 and 5-320, sections 44-10-502(4) and 44-10-503(10), C.R.S., and Rules 6-225 and 6-320, and sections 44-10-602(6) and 44-10-603(10), C.R.S.

"Security(ies)" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

"Security Alarm System" means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

"Semi-synthetic Cannabinoid" means a substance that is created by a chemical reaction that converts one cannabinoid extracted from a cannabis plant 38 directly into a different cannabinoid.

a. Semi-synthetic cannabinoid includes cannabinoids, such as cannabinol (CBN) that was produced by the conversion of cannabidiol (CBD).

b. Semi-synthetic cannabinoid does not include cannabinoids produced via decarboxylation of naturally occurring acidic forms of cannabinoids, such as

tetrahydrocannabinolic acid, into the corresponding neutral cannabinoid, such as THC, through the use of heat or light, without the use of chemical reagents or catalysts, and that results in no other chemical change.

"Shell Company" means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB, that has:

a. No or nominal operations; and

b. Either:

i. No or nominal operations;

ii. Assets consisting solely of cash and cash equivalents; or

iii. Assets consisting of any amount of cash and cash equivalents and nominal other assets.

"Shipping Container" means a hard-sided container with a lid or other enclosure that can be secured in place. A Shipping Container is used solely for the transport of Regulated Marijuana between Regulated Marijuana Businesses or a Pesticide Manufacturer.

"Single-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing no more than 10mg of active THC.

"Social Equity Licensee" means a natural person who meets the criteria established pursuant to section 44-10-308(4), C.R.S. A person qualified as a Social Equity Licensee may participate in the accelerator program established pursuant to the Marijuana Code or may hold a Regulated Marijuana Business License or permit issued pursuant to the Marijuana Code.

"Solvent-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of a solvent approved by the Division pursuant to Rule 5-315.

"Solvent-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of a solvent approved by the Division pursuant to Rule 6-315.

"Standardized Graphic Symbol" means a graphic image or small design adopted by a Licensee to identify its business.

"Standardized Serving of Marijuana" means a standardized single serving of active THC in Retail Marijuana. The size of a Standardized Serving of Marijuana shall be no more than 10mg of active THC.

"State Licensing Authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale, and testing of Regulated Marijuana in Colorado, pursuant to section 44-10-201, C.R.S.

"Synthetic Cannabinoid" means a cannabinoid-like compound that was produced by using chemical synthesis, chemical modification, or chemical conversion, including by using in-vitro biosynthesis or other bioconversion of such a method.

a. Synthetic cannabinoid does not include:

i. A compound produced through the decarboxylation of naturally occurring cannabinoids from their acidic forms; or

ii. A semi-synthetic cannabinoid.

"Target Potency" means the potency that a Medical Marijuana Products Manufacturer intends for an individual Medical Marijuana Product, or a Retail Marijuana Products Manufacturer intends for an individual Retail Marijuana Product, prior to testing, which is also outlined in the Licensee's standard operating procedures.

"Temporary Appointee Registration" means a registration issued to a Court Appointee pursuant to section 44-10-401(3)(a), C.R.S.

"THCA" means tetrahydrocannabinolic acid.

"THC" means tetrahydrocannabinol.

"Test Batch" means a group of Sample Increments that are derived from a single Harvest Batch, Production Batch, or Inventory Tracking System package, and that are collectively submitted to a Regulated Marijuana Testing Facility for testing purposes.

"Total THC" means the following:

The sum of the percentage by weight of Delta-9-tetrahydrocannabinolic acid (D9-THCA) multiplied by 0.877,

Plus the percentage by weight of Delta-8-tetrahydrocannabinol (D8-THC),

Plus the percentage by weight of Delta-9-tetrahydrocannabinol (D9-THC),

Plus the percentage by weight of Exo-tetrahydrocannabinol (Exo-THC),

Plus the percentage by weight of Delta-10-tetrahydrocannabinol (D10-THC).

i.e. Total THC = (% D9-THCA * 0.877) + % D8-THC + % D9-THC + % Exo-THC + % D10-THC.

"Transfer(s)(ed)(ing)" means to grant, convey, hand over, assign, sell, exchange, donate, or barter, in any manner or by any means, with or without consideration, any Regulated Marijuana from one Licensee to another Licensee, to a patient, or to a consumer. A Transfer includes the movement of Regulated Marijuana from one Licensed Premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual Transfer that is reflected in the Inventory Tracking System, even if no physical movement of the Regulated Marijuana occurs.

"Universal Symbol" means the image established by the Division and made available to Licensees through the Division's website indicating the Regulated Marijuana contains marijuana.

"Unrecognizable" means Regulated Marijuana that has been rendered indistinguishable from any other plant material.

"U.S. Person" means:

a. Any natural person resident in the United States;

b. Any partnership or corporation organized or incorporated under the laws of the United States;

c. Any estate of which any executor or administrator is a U.S. natural person;

d. Any trust of which any trustee is a U.S. natural person;

e. Any agency or branch of a foreign entity located in the United States;

f. Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. natural person;

g. Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if a natural person) resident in the United States; and

h. Any partnership or corporation if:

i. Organized or incorporated under the laws of any foreign jurisdiction; and

ii. Formed by a U.S. natural person principally for the purpose of investing in Owner's Interests not registered under the Securities Act of 1933, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

"Vaporizer Delivery Device" means inhalable Regulated Marijuana Concentrate, which may be comprised of other Ingredients inside a device that uses a heating element to create a vapor including, but not limited to, vaporizer cartridges and vaporizer pens.

"Vegetative" means the state of the *Cannabis* plant during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

Basis and Purpose – 1-120

The statutory authority for this rule includes but is not limited to sections 24-4-105(11) and 44-10-201, C.R.S. The purpose of this rule is to establish a system by which a Licensee may request the Division to issue a formal statement of position and, subsequently, petition the State Licensing Authority for a declaratory order. Typically, a position statement or declaratory order would address matters that are likely to be applicable to other Licensees. The approach is similar to that utilized by other divisions within the Department of Revenue. This Rule 1-120 was previously Rules M and R 104, 1 CCR 212-1 and 1 CCR 212-2.

1-120 – Declaratory Orders Concerning the Marijuana Code

A. Who May Request a Statement of Position. Any person as defined in section 24-4-102(12), C.R.S., may request the Division to issue a statement of position concerning the applicability to the petitioner of any provision of the Marijuana Code, or any regulation of the State Licensing Authority.

B. Division Response. The Division will determine, in its sound discretion, whether to respond with a written statement of position. Following receipt of a proper request, the Division will respond by issuing a written statement of position or by declining to issue such a statement.

C. Petition for Declaratory Order. Any person who has properly requested a statement of position, and who is dissatisfied with the Division's response, may petition the State Licensing Authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. The petition shall be filed within 30 days of the Division's response, or may be filed at any time before the Division's response if the Division has not responded within 60 days of receiving a proper request for a statement of position, and shall set forth the following:

1. The name and address of the petitioner.

2. Whether the petitioner is licensed pursuant to the Marijuana Code, and if so, the type of license and address of the Licensed Premises.

3. Whether the petitioner is involved in any pending administrative hearings with the State Licensing Authority or relevant Local Jurisdiction.

4. The statute, rule, or order to which the petition relates.

5. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.

6. A concise statement of the legal authorities, if any, and such other reasons upon which petitioner relies.

7. A concise statement of the declaratory order sought by the petitioner.

D. State Licensing Authority Retains Discretion Whether to Entertain Petition. The State Licensing Authority will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the State Licensing Authority decides it will not entertain a petition, it shall notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner failed to properly request a statement of position from the Division, or the petition for declaratory order was filed with the State Licensing Authority more than 30 days after the Division's response to the request for a statement of position.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule, or order in question.

3. The petition involves a subject, question or issue that is relevant to a pending hearing before the state or any Local Licensing Authority, an on-going investigation conducted by the Division, or a written complaint previously filed with the State Licensing Authority.

4. The petition seeks a ruling on a moot or hypothetical question.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.

E. State Licensing Authority May Adopt Division Position Statement. The State Licensing Authority may adopt the Division Position Statement as a Final Agency Order subject to judicial review pursuant to section 24-4-106, C.R.S.

F. If State Licensing Authority Entertains Petition. If the State Licensing Authority determines that it will entertain the petition for declaratory order, it shall so notify the petitioner within 30 days, and any of the following procedures may apply:

1. The State Licensing Authority may expedite the matter by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing.

2. In the event the State Licensing Authority determines that an evidentiary hearing is necessary to a ruling on the petition, a hearing shall be conducted in accordance with Rules 8-220 – Administrative Hearings, 8-225 – Administrative Subpoenas, and 8-230 – Administrative Hearing Appeals. The petitioner will be identified as Respondent.

3. The parties to any proceeding pursuant to this Rule shall be the petitioner/Respondent and the Division. Any other interested person may seek leave of the State Licensing Authority to intervene in the proceeding and such leave may be granted if the State Licensing Authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

4. The declaratory order shall constitute a Final Agency Order subject to judicial review pursuant to section 24-4-106, C.R.S.

G. Public Inspection. Files of all requests, petitions, statements of position, and declaratory orders will be maintained by the Division. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

H. Posted on Website. The Division shall post a copy of all statements of position and all declaratory orders on the Division's website.

Basis and Purpose – 1-125

The statutory authority for this rule includes but is not limited to section 44-10-202(1)(c), C.R.S. The purpose of this rule is to clarify that any reference to days means calendar days. This Rule 1-125 was previously Rules M and R 105, 1 CCR 212-1 and 1 CCR 212-2.

1-125 – Computation of Time

The word "days" as used in these rules means calendar days.

Basis and Purpose – 1-130

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c) and 44-10-801(4), C.R.S. The purpose of this rule is to establish the basic fees that must be paid at the time of service of any subpoena (including a subpoena for testimony and/or a subpoena duces tecum) upon the State Licensing Authority, and for production of documents pursuant to any such subpoena. This rule also establishes additional fees for meals, mileage, and each day's testimony. The service fee is not applicable when a subpoena is served by a governmental agency. This Rule 1-130 was previously Rules M and R 106, 1 CCR 212-1 and 1 CCR 212-2.

1-130 – Subpoena Fees

A. Required Fees for Subpoenas. The following fees must be paid at the time of service of any subpoena on the Division or State Licensing Authority:

1. Subpoenas for records only (*subpoenas duces tecum*):

a. Responsive records - $0.25/page. The Division and State Licensing Authority may use discretion when electronic copies are requested.

b. The Division or State Licensing Authority may charge $30/hour to retrieve and review voluminous records.

2. Subpoenas requiring any Division or State Licensing Authority employee to attend any proceeding:

a. $200/day attendance;

b. Current state mileage reimbursement fee; and

c. Current state meal reimbursement fee.

B. When Subpoena-Related Fees Are Due.

1. Subpoenas duces tecum fees must be paid before the Division or State Licensing Authority will release the records.

2. All other subpoena-related fees are due at the time of service of the subpoena.

C. Service Complete Only When Fees Are Paid. The Division or State Licensing Authority will not consider service to be complete unless all applicable fees are paid.

D. State Employees and Private Litigation. Division and State Licensing Authority employees will not serve as expert witnesses in private litigation. In addition, the Division and State Licensing Authority may move to quash any subpoena that seeks fact testimony from Division or State Licensing Authority employees in private litigation.

E. Not Applicable to Government-Issued Subpoenas. This Rule does not apply to subpoenas issued by any governmental agency.

Basis and Purpose – 1-135

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(f), 44-10-203(1)(g), and 44-10-301, C.R.S. This rule gives general instructions regarding Regulated Marijuana Business administrative matters to local jurisdictions and clarifies for such entities what the Division and State Licensing Authority will do in certain instances. The rule also reaffirms that local law enforcement's authority to investigate and take any necessary action with regard to Regulated Marijuana Businesses remains unaffected by the Marijuana Code or any rules promulgated pursuant to it. This Rule 1-135 was previously Rules M and R 1401(A) through (D), 1 CCR 212-1 and 1 CCR 212-2.

1-135 – Instructions for Local Licensing Authorities and Local Jurisdictions

A. Division Protocol for Regulated Marijuana Businesses.

1. The Division shall forward a copy of all new Regulated Marijuana Business applications to the relevant Local Licensing Authority or Local Jurisdiction.

2. The Division shall forward half of the total application fee with the copy of the Retail Marijuana Business application to the relevant Local Jurisdiction.

3. The Division shall notify the relevant Local Licensing Authority or Local Jurisdiction when an application for a Regulated Marijuana Business is either approved or denied. This

includes new business applications, renewal business applications, change of location applications, change of owner applications, premises modification applications, and off-premises storage permit applications.

4. Conditioned on Local Approval. Any License issued or renewed by the Division for a Regulated Marijuana Business shall be conditioned upon relevant Local Licensing Authority or Local Jurisdiction approval of the application.

B. Local Licensing Authority/Local Jurisdiction Protocol for Regulated Marijuana Businesses.

1. As soon as practicable, a Local Licensing Authority or Local Jurisdiction that has prohibited the operation of a Regulated Marijuana Business License authorized by the Marijuana Code shall inform the Division, in writing, of such prohibition and shall include a copy of the applicable ordinance or resolution.

2. If a Local Licensing Authority or Local Jurisdiction will authorize the operation of a Regulated Marijuana Business License authorized by the Marijuana Code, it shall inform the Division of the local point-of-contact on Regulated Marijuana regulatory matters. The Local Jurisdiction shall include, at minimum, the name of the division or branch of local government, the mailing address of that entity, and telephone number.

3. Local Licensing Authorities or Local Jurisdictions may impose separate local licensing requirements related to the time, place, and manner of Regulated Marijuana Businesses, and shall otherwise determine if an application meets all those local requirements.

4. The relevant Local Licensing Authority or Local Jurisdiction shall notify the Division, in writing, of whether an application for a Regulated Marijuana Business complies with local restrictions and requirements, and whether the application is approved or denied based on that review. If a Local Licensing Authority or Local Jurisdiction makes any written findings of fact, a copy of those written findings shall be included with the notification.

C. Local Licensing Authority Inspections. The relevant Local Licensing Authorities or Local Jurisdiction and their investigators may inspect Regulated Marijuana Businesses during all business hours and other times of apparent activity, for the purpose of inspection or investigation.

D. Local Licensing Authority Powers. Nothing in these rules shall be construed to limit the authority of Local Licensing Authorities or Local Jurisdictions as established by the Marijuana Code or otherwise by law.

Basis and Purpose – 1-140

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(f) 44-10-203(1)(g), and 44-10-301(1), C.R.S. This rule gives general instructions regarding Regulated Marijuana Business administrative matters to local jurisdictions and clarifies for such entities what the Division and State Licensing Authority will do in certain instances. The rule also reaffirms that local law enforcement's authority to investigate and take any necessary action with regard to Regulated Marijuana Businesses remains unaffected by the Marijuana Code or any rules promulgated pursuant to it. This Rule 1-140 was previously Rules M and R 1401(E), 1 CCR 212-1 and 1 CCR 212-2.

1-140 – Local Law Enforcement's Authority Not Impaired by Marijuana Code

Nothing in the Marijuana Code or any rules promulgated pursuant to it shall be construed to limit the ability of local police departments, sheriffs, or other state or local law enforcement agencies to investigate unlawful activity in relation to a Regulated Marijuana Business and such agencies shall have the ability to run a Colorado Crime Information Center criminal history check of an Applicant or Licensee during an

investigation of unlawful activity related to Regulated Marijuana or a Regulated Marijuana Business to ensure they are in compliance with all Local Licensing Authority regulations related to time, place, and manner.

Part 2 – Applications and Licenses

2-200 Series – Applications and Licenses Rules

Basis and Purpose – 2-205

The statutory basis for this rule includes but is not limited to sections 44-10-103, 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(b), 44-10-203(2)(h), 44-10-203(2)(q), 44-10-203(2)(w), 44-10-203(2)(dd)(XII), 44-10-303(2)(b), 44-10-310(7), 44-10-313, 44-10-401, 44-10-801, 44-10-802, 44-10-803, 44-10-1201, 44-10-1202, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish fees required for applications, renewals, licenses fees, permits, and other fees required to accompany applications and submissions to the Division. The Division anticipates evaluating all fees in connection with a fee analysis. Any recommendations from the fee analysis will be considered during subsequent rulemaking proceedings. This Rule 2-205 was previously Rules M 207, 208, 209, 210, 235, and 236, 1 CCR 212-1, and Rules R 207, 208, 209, 210, 234, and 235, 1 CCR 212-2.

2-205 – Fees

A. Regulated Marijuana Business Initial Application and License Fees.

1. Medical Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Medical Marijuana Store	$5,000.00	$2,440.00	$7,440.00
Medical Marijuana Products Manufacturer	$1,000.00	$1,830.00	$2,830.00
Medical Marijuana Cultivation Facility Class 1 (1-500 plants)	$1,000.00	$1,830.00	$2,830.00
Medical Marijuana Testing Facility	$1,000.00	$1,830.00	$2,830.00
Medical Marijuana Transporter	$1,000.00	$5,368.00	$6,368.00
Medical Marijuana Business Operator	$1,000.00	$2,684.00	$3,684.00
Marijuana Research and Development Facility	$1,000.00	$1,830.00	$2,830.00

2. Retail Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**

Retail Marijuana Store	$5,000.00	$2,440.00	**Separate Checks** $4,940.00 State $2,500.00 Local
Retail Marijuana Products Manufacturer	$5,000.00	$1,830.00	**Separate Checks** $4,330.00 State $2,500.00 Local
Retail Marijuana Cultivation Facility Tier 1 (1-1,800 plants)	$5,000.00	$1,830.00	**Separate Checks** $4,330.00 State $2,500.00 Local
Retail Marijuana Testing Facility	$1,000.00	$1,830.00	**Separate Checks** $2,330.00 State $500.00 Local
Retail Marijuana Transporter	$1,000.00	$5,368.00	**Separate Checks** $5,868.00 State $500.00 Local
Retail Marijuana Business Operator	$1,000.00	$2,684.00	**Separate Checks** $3,184.00 State $500.00 Local
Marijuana Hospitality Business (Eff. Jan. 1, 2020)	$1,000.00	$1,220.00	**Separate Checks** $1,720.00 State $500.00 Local
Retail Marijuana Hospitality and Sales Business (Eff. Jan. 1, 2020)	$5,000.00	$2,440.00	**Separate Checks** $4,940.00 State $2,500.00 Local

B. Regulated Marijuana Business Renewal Application and License Renewal Fees.

1. Medical Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Medical Marijuana Store	$300.00	$1,830.00	$2,130.00
Medical Marijuana Products Manufacturer	$300.00	$1,830.00	$2,130.00

Medical Marijuana Cultivation Facility Class 1 (1-500 plants)	$300.00	$1,830.00	$2,130.00
Class 2 (501-1,500 plants)		$2,806.00	$3,106.00
Class 3 (1,501-3,000 plants)		$4,270.00	$4,570.00
Expanded Production Management (for each class of 3,000 plants over Class 3)		$4,270.00 [Plus $976.00 for each additional class of 3,000 plants over Class 3]	$4,570.00 [Plus $976.00 for each additional class of 3,000 plants over Class 3]
Medical Marijuana Testing Facility	$300.00	$1,830.00	$2,130.00
Medical Marijuana Transporter	$300.00	$5,368.00	$5,668.00
Medical Marijuana Business Operator	$300.00	$2,684.00	$2,984.00
Marijuana Research and Development Facility	$300.00	$1,830.00	$2,130.00

2. Retail Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Retail Marijuana Store	$300.00	$1,830.00	$2,130.00
Retail Marijuana Products Manufacturer	$300.00	$1,830.00	$2,130.00
Retail Marijuana Cultivation Facility Tier 1 (1-1,800 plants)	$300.00	$1,830.00	$2,130.00
Tier 2 (1,801-3,600 plants)		$2,806.00	$3,106.00
Tier 3 (3,601-6,000 plants)		$3,660.00	$3,960.00
Tier 4 (6,001-10,200 plants)		$5,490.00	$5,790.00
Tier 5 (10,201-13,800 plants)		$7,930.00	$8,230.00
Expanded Production Management (for each additional tier of 3,600 plants over Tier 5)		$7,930.00 [Plus $976.00 for each	$8,230.00 [Plus $976.00 for each

		additional tier of 3,600 plants over Tier 5]	additional tier of 3,600 plants over Tier 5]
Retail Marijuana Testing Facility	$300.00	$1,830.00	$2,130.00
Retail Marijuana Transporter	$300.00	$5,368.00	$5,668.00
Retail Marijuana Business Operator	$300.00	$2,684.00	$2,984.00
Marijuana Hospitality Business (Eff. Jan. 1, 2020)	$300.00	$915.00	$1,215.00
Retail Marijuana Hospitality and Sales Business (Eff. Jan. 1, 2020)	$300.00	$1,830.00	$2,130.00

C. Owner Request for a Finding of Suitability, Owner License, and Owner Identification Badge – Initial Application and Renewal Fees.

1. Controlling Beneficial Owner Request for a Finding of Suitability Fee.

a. $800.00 per Natural Person

b. $400.00 per Natural Person in possession of a valid Owner's License who is an Accelerator-Endorsed Licensee and seeking to have the existing Owner's License designated as a Social Equity Licensee.

c. $800.00 for an Entity that is not a Publicly Traded Corporation, plus the fee in paragraph (C)(1)(a) and (C)(1)(b), for each associated natural person subject to suitability

d. $5,000.00 for a Publicly Traded Corporation, plus the fee in paragraph (C)(1)(a) and (C)(1)(b), for each associated natural person or Entity subject to suitability.

2. Passive Beneficial Owner Request for Finding of Suitability Fee. A Passive Beneficial Owner may, but is not required to, apply for an Owner License and Identification Badge, and if the Passive Beneficial Owner chooses to do so, must submit the fees required by subparagraph (C)(1).

3. Renewal Fee for an Owner License. All Controlling Beneficial Owners and licensed Passive Beneficial Owners - $500.00.

D. Employee License – Initial Fees and Renewal Fees.

1. Employee License Initial Application and License Fee – $105.00

a. Of the total Employee License application and license fee, $75.00 is the application fee and $30.00 is the license fee. An individual submitting an application for an Employee License may submit the total fee of $105.00 in one form of payment.

2. Employee License Renewal Fee – $80.00

a. Of the total Employee License Renewal fee, $50.00 is the application fee and $30.00 is the license fee. An individual submitting an application for an Employee License renewal may submit the total fee of $80.00 in one form of payment.

b. All Key Licenses and Support Licenses issued before January 1, 2020 will be converted to an Employee License upon the first license renewal following January 1, 2020.

3. Conditional Employee License Fee - $200.00

E. Temporary Appointee Registration – Request for Finding of Suitability Fees.

1. Natural Person – $274.00

2. Entity – $976.00

F. Other Fees. The following other fees apply:

1. Permits.

a. Off Premises Storage Permit – $1,830.00

b. Transporter Off Premises Storage Permit – $2,684.00

c. Centralized Distribution Permit – $24.00

d. R&D Co-Location Permit – $61.00

e. Delivery Permit:

i. Initial Fee if the Store or Transporter Business License will expire in 6 months or less - $2,440.00.

ii. Initial Fee if the Store or Transporter Business License will expire in more than 6 months - $4,880.00.

iii. All Renewals - $2,440.00

f. Transition Permit – $305.00

2. Regulated Marijuana Business Changes. The following fees apply per license:

a. Change of Controlling Beneficial Owner – $1,952.00

b. Changes Exempt from Change of Owner Application Requirement – $976.00

c. Change of Trade Name – $61.00

d. Change of Location – $610.00

e. Modification of Licensed Premises – $122.00

3. Marijuana Research and Development Facility Research Project Proposal – $610.00

4. Responsible Vendor Provider Applications.

a. Responsible Vendor Program Provider Initial Application – $1,037.00

b. Responsible Vendor Program Provider Renewal Application – $427.00

5. Duplicate License, Identification Badge, Certificate, Regulated Marijuana Business License Reinstatement.

a. Duplicate Business License – $24.00

b. Duplicate Owner or Employee Identification Badge – $24.00

c. Responsible Vendor Program Provider Duplicate Certificate – $61.00

d. Reinstatement of Regulated Marijuana Business License - $305.00

6. Outdoor Contingency Plan Review - $1,200.00

G. When Fees are Due. All fees in this Rule are due at the time the application or request is submitted.

Basis and Purpose – 2-210

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(w), 44-10-305, 44-10-901(2), and 24-4-105(2) C.R.S. The purpose of this rule is to clarify the duties that Applicants and Licensees have when reporting to the State Licensing Authority information that is necessary for the issuance of a state license. These duties include but are not limited to reporting and keeping a mailing address current, reporting a felony conviction or other disqualifying event, cooperating with the State Licensing Authority and his or her employees, and notifying the State Licensing Authority of any change of registered agent in the State of Colorado. This rule further provides that all communications or notifications that the State Licensing Authority or Division send an Applicant or Licensee will be sent to the last known address. The Applicant's or Licensee's failure to notify the Division of a change of address does not relieve the Applicant or Licensee from timely responding to any correspondence or notification.

2-210 – Duties of All Applicants and Licensees

A. Duty to Keep Mailing Address Current: All Applicants and Licensees.

1. Timing of Notification. An Applicant or Licensee must provide a physical mailing address to the Division and may provide an electronic mailing address to the Division. A Licensee must inform the Division in writing of any change to its physical mailing address and/or electronic mailing address within 28 days of the change. The Division will not change a Licensee's information without written notice from the Licensee or its authorized agent.

2. State Licensing Authority and Division Communications. The State Licensing Authority and Division will send any formal notifications or determinations regarding any application or an administrative action to the last mailing address and to the last electronic mailing address, if any, furnished to the Division by the Applicant or Licensee.

3. Failure to Change Address Does Not Relieve Applicant's or Licensee's Obligations. An Applicant's or Licensee's failure to notify the Division of a change of physical or electronic mailing address does not relieve the Applicant or Licensee from the obligation of responding to a Division communication or a State Licensing Authority communication.

B. Duty to Report Felony - Convictions, Deferred Sentences and Judgments. An Applicant or Licensee must notify the Division in writing of any felony conviction or deferred sentence or judgment regarding a felony against him or her within seven days of the conviction or deferred sentence or judgment. The notification must include disposition documents. Failure to make required notification to the Division may be grounds for administrative action.

C. Duty to Report Any Disqualifying Event. Applicants and Licensees must notify the Division within seven days of any change of fact that would result in the Applicant or Licensee being disqualified from holding a license, permit, or registration pursuant to the Marijuana Code, or these Rules.

D. Duty to Cooperate. Applicants and Licensees must cooperate in any investigation conducted by the Division. Failure to cooperate with a Division investigation may be grounds for denial of an application or for administrative action against a Licensee.

E. Duty to Report Change of Registered Agent. A Regulated Marijuana Business must disclose any change of its registered agent in the State of Colorado within seven days of the change.

Basis and Purpose – 2-215

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(k), 44-10-203(2)(w), 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, 44-10-314 and 44-10-316, C.R.S. The purpose of this rule is to establish requirements for all applications including: required application fees; complete, accurate and truthful applications; notification of the applicable local licensing authority or local jurisdiction; that the Applicant or Licensee establish he, she or it is not a person prohibited from licensure; submission of additional information or documents upon request by the Division; and notification that all application material may be disclosed consistent with the Marijuana Code.

2-215 – All Applications Requirements

A. Applicability. This Rule 2-215 applies to all applications submitted to the Division for a license, permit, or registration provided by the Marijuana Code.

B. Division Forms Required. All applications for licenses, registrations, or permits authorized by subsections 44-10-401(2) and (3), C.R.S., must be made on current Division forms.

C. Application Fees Required. Applications must be accompanied by full remittance of the required application and license fees. *See* Rule 2-205.

D. Complete, Accurate, and Truthful Applications Required. Applications must be complete, accurate, and truthful and include all attachments and supplemental information. Incomplete applications may not be accepted by the Division.

E. Local Licensing Authority/Local Jurisdiction.

1. Each application must identify the applicable Local Licensing Authority or Local Jurisdiction.

2. If the Local Licensing Authority or Local Jurisdiction requires a physical copy of the application, the Applicant or Licensee must submit the original application and one identical copy to the Division. Otherwise the Applicant or Licensee must submit only the original application to the Division.

F. Applicant Not Prohibited From Licensure. Applicants must provide information establishing the Applicant is not a Person prohibited from licensure by section 44-10-307, C.R.S.

G. Additional Information and Documents May Be Required.

1. Upon request by the Division, an Applicant must provide additional information or documents required to process and investigate the application. The additional information or documents must be provided within seven days of the request, however, this deadline may be extended for a period of time commensurate with the scope of the request.

2. An Applicant's failure to provide requested information or documents by the deadline may be grounds for denial of the application.

H. Application Forms Accessible. All application forms provided by the Division and filed by an Application for a license, registration, or permit, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Marijuana Code, for investigation or enforcement of any international, federal, state, or local securities law or regulation, for any other state or local law enforcement purpose, or as otherwise required by law.

Basis and Purpose – 2-220

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-301, 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, and 44-10-316, C.R.S. The purpose of this rule is to establish the general requirements and processes for submission of an initial application for a Regulated Marijuana Business to the State Licensing Authority.

Please Note: *The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement SB 23-199 and no substantive changes to the emergency rules have been incorporated into this draft.*

2-220 – Initial Application Requirements for Regulated Marijuana Businesses

A. Documents and Information Requested. Every initial application for a Regulated Marijuana Business License must include all required documents and information including, but not limited to:

1. A copy of the local license application, if required, for a Regulated Marijuana Business.

2. Certificate of Good Standing from the jurisdiction in which the Entity was formed, which must be one of the states of the United States, territories of the United States, District of Columbia, or another country that authorizes the sale of marijuana.

3. If the Applicant is an Entity, the identity and physical address of its registered agent in the state of Colorado.

4. Organizational Documents. Articles of Incorporation, by-laws, and any shareholder agreement for a corporation; articles of organization and operating agreement for a limited liability company; or partnership agreement for a partnership.

5. Corporate Governance Documents.

a. A Regulated Marijuana Business that is a Publicly Traded Corporation must maintain corporate governance documents as required by the securities exchange on which its securities are listed and traded, and section 44-10-103(50), C.R.S., and must provide those corporate governance documents with each initial application.

b. A Regulated Marijuana Business that is not a Publicly Traded Corporation is not required to maintain any corporate governance documents. However, if the Regulated Marijuana Business that is not a Publicly Traded Corporation voluntarily maintains corporate governance documents, the Division encourages inclusion of such documents with each initial application.

6. The deed, lease, sublease, rental agreement, contract, or any other document(s) establishing the Applicant is, or will be, entitled to possession of the premises for which the application is made.

7. Legible and accurate diagram for the facility. The diagram must include a plan for the Licensed Premises and a separate plan for the security/surveillance plan including camera location, number and direction of coverage. If the diagram is larger than 8.5 x 11 inches, the Applicant must also provide a copy of the diagram in a portable document format (.pdf).

8. All required findings of suitability issued by the Division.

9. If the Applicant is a Publicly Traded Corporation:

a. Documents establishing the Publicly Traded Corporation qualifies to hold a Regulated Marijuana Business ~~l~~License including but not limited to disclosure of securities exchange(s) on which its Securities are listed and traded, the stock symbol(s), the identity of all regulators with regulatory oversight over its Securities; and

b. Divestiture plan for any Controlling Beneficial Owner that is a Person prohibited by the Marijuana Code, has had her or his Owner License revoked, or has been found unsuitable.

10. Financial Statements. Consolidated financial statements (which may be prepared on either a calendar or fiscal year basis) that were prepared in the preceding 365 days, and which must include a balance sheet, an income statement, and a cash flow statement. If the Applicant or Regulated Marijuana Business is required to have audited financial statements by another regulator (e.g. United States Securities and Exchange Commission or the Canadian Securities Administrators) the financial statements provided to the Division must be audited and must also include all footnotes, schedules, auditors' report(s), and auditor's opinion(s). If the financial statements are publicly available on a website (e.g. EDGAR or SEDAR), the Applicant or Regulated Marijuana Business may provide notification of the website link where the financial statements can be accessed in lieu of hardcopy submission.

11. Tax Documents. While duplicate tax documentation is not required to be provided with the application, the Applicant shall cooperate with the Division to establish proof of compliant return filing and payment of taxes related to any Regulated Marijuana Business in which the Person is, or was, required to file and pay taxes.

B. Local Licensing/Approval Required.

1. Regulated Marijuana Business Local Licensing Authority Approval Required.

a. If the Division grants a license to a Regulated Marijuana Business before the Local Licensing Authority or Local Jurisdiction approves the application or grants a local license, the state license will be conditioned upon local approval. If the

Local Licensing Authority denies the application, the state license will be revoked.

b. An Applicant is prohibited from operating a Regulated Marijuana Business prior to obtaining all necessary licenses, registrations, permits, or approvals from both the State Licensing Authority and the Local Licensing Authority or Local Jurisdiction.

2. Retail Marijuana Business One Year to Obtain Local Jurisdiction Approval Required.

a. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing from the Local Jurisdiction.

b. If the Applicant fails to obtain Local Jurisdiction approval or licensing within one year from grant of the state license, the state license may ~~expires and may not~~ be renewed in accordance with Rule 2-225(G)(2).

C. Social Equity License Qualification.

1. A natural person who can establish he or she qualifies as a Social Equity Licensee may apply for either a Regulated Marijuana Business License or an Accelerator License.

2. Qualifications. To qualify as a Social Equity Licensee, the Applicant must be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules, and must meet the following minimum eligibility requirements:

a. The Applicant is a Colorado Resident and has established Colorado residency by providing the items required by Rule 2-265(H).

b. The Applicant has not been the Beneficial Owner of a License subject to administrative action issued by the State Licensing Authority resulting in the revocation of a license issued pursuant to the Marijuana Code;

c. The Applicant has demonstrated at least one of the following:

i. The Applicant has resided for at least fifteen years between the years 1980 and 2010 in a census tract designated by the office of economic development and international trade as an opportunity zone or a census tract designated as a Disproportionate Impacted Area;

ii. The Applicant or the Applicant's parent, legal guardian, sibling, spouse, child, or minor in their guardianship was arrested for a marijuana offense, convicted of a marijuana offense, or was subject to civil asset forfeiture related to a marijuana investigation; or

iii. The Applicant's household income in the year prior to application did not exceed 50% of the state median income as measured by the number of people who reside in the Applicant's household.

d. The Social Equity Licensee, or collectively one or more Social Equity Licensees, holds at least fifty-one percent of the Beneficial Ownership of the Regulated Marijuana Business License.

3. Information Required to Establish Qualification as a Social Equity Licensee.

a. To demonstrate qualification as a Social Equity Licensee based on residence during the relevant time period, the Applicant must demonstrate the Applicant's residency which may include either:

i. Providinge information or documents including but not limited to a copy of school records, rental agreements, lease agreements, utility bills, mortgage statements, loan documents, bank records, tax returns, or any other document which proves the Applicant's place of residence; or

ii. Affirming, under penalty of perjury, the Applicant's place of residence and provide the name(s) and contact information for at least one individual who can verify the Applicant's place of residence during the time period at issue.

b. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on a prior marijuana conviction of a family member, the Applicant must provide affirmation of the familial relationship and court or other documents demonstrating the family member's arrest or conviction for a marijuana offense or that the family member was subject to a civil asset forfeiture related to a marijuana investigation.

c. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on the Applicant's income, the Applicant must provide the Applicant's tax return for the prior year. If an Applicant applies between January 1 and April 15 but has not yet filed a tax return, the application may be delayed or denied until the tax return is filed and provided to the Division. The Division cannot accept tax returns for previous years.

4. Denial of an Application on the Basis of a Marijuana Conviction. The State Licensing Authority will not deny an application for a Social Equity License or a related request for a finding of suitability on the sole basis of a marijuana conviction.

D. Accelerator License Application and Qualification.

1. License Issuance.

a. Beginning January 1, 2021, a Social Equity Licensee may apply for an Accelerator License. The application shall be made on Division forms and in accordance with the 2-200 Series Rules.

b. An Accelerator Licensee may exercise the privileges of a Retail Marijuana Cultivation Facility License, Retail Marijuana Products Manufacturer License, or Retail Marijuana Store License on the Licensed Premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store that has been approved as an Accelerator-Endorsed Licensee or on a Licensed Premises under the control of the Accelerator-Endorsed Licensee.

2. Qualifications. To qualify for an Accelerator License, an Applicant must:

a. Be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules; and

b. Be approved as a Social Equity Licensee pursuant to this Rule.

3. Information Required to Establish Qualification as an Accelerator Licensee. To establish that an Applicant qualifies as an Accelerator Licensee, he or she must establish:

a. Qualification as a Social Equity Licensee; and

b. An affirmation that the Applicant has not been the Beneficial Owner of a Regulated Marijuana Business License issued pursuant to the Marijuana Code.

Basis and Purpose – 2-225

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-305(2)(b)(I)(C). 44-10-307, 44-10-308, 44-10-309, 44-10-313, 44-10-314, and 44-10-316 C.R.S. The purpose of this rule is to establish the requirements and procedures for the license renewal process, including the circumstances under which an expired license may be reinstated.

***Please Note:** The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement SB 23-199 and no substantive changes to the emergency rules have been incorporated into this draft.*

2-225 – Renewal Application Requirements for All Licensees

A. License Periods.

1. Regulated Marijuana Business and Owner Licenses are valid for one year from the date of issuance.

2. Medical Marijuana Transporters, Retail Marijuana Transporters, and Employee Licenses are valid for two years from the date of issuance.

B. Division Notification Prior to Expiration.

1. The Division will send a notice of license renewal 90 days prior to the expiration of an existing Regulated Marijuana Business or Owner License by first class mail to the Licensee's physical address of record.

2. Failure to receive the Division notification does not relieve the Licensee of the obligation to timely renew the license.

C. Renewal Deadline.

1. A Licensee must apply for the renewal of an existing license prior to the License's expiration date.

2. A renewal application submitted to the Division prior to the license's expiration date shall be deemed timely pursuant to subsection 24-4-104(7), C.R.S., and the Licensee may continue to operate until Final Agency Order on the renewal application.

D. If License Not Renewed Before Expiration. A license is immediately invalid upon expiration if the Licensee has not filed a renewal application and remitted all of the required application and

license fees prior to the license expiration date. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date must not operate unless it first obtains a new state license and any required local license.

1. Reinstatement of Expired Regulated Marijuana Business License. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date may request that the Division reinstate an expired license only in accordance to the following:

    a. The Regulated Marijuana Business License expired within the previous 30 days;

    b. The Regulated Marijuana Business License has submitted an initial application pursuant to Rule 2-220. The initial application must be submitted prior to, or concurrently with, the request for reinstatement;

    c. The Regulated Marijuana Business has paid the reinstatement fee in Rule 2-205; and

    d. Any license or approval from the Local Licensing Authority or Local Jurisdiction is still valid or has been obtained.

2. Reinstatement Not Available for Surrendered or Revoked Licenses. A request for reinstatement cannot be submitted and will not be approved for a Regulated Marijuana Business License that was surrendered or revoked.

3. Reinstatement Not Available for Owner Licenses or Employee Licenses. A request for reinstatement cannot be submitted and will not be approved for expired, surrendered, or revoked Owner Licenses or Employee Licenses.

4. Denial of Request for Reinstatement or Administrative Action. If the Licensee requesting reinstatement of a Regulated Marijuana Business License operated during a period that the license was expired, the request may be subject to denial and the Licensee may be subject to administrative action as authorized by the Marijuana Code or these Rules.

5. Approval of Request for Reinstatement. Upon approval of any request for reinstatement of an expired Regulated Marijuana Business License, the Licensee may resume operations until the final agency action on the Licensee's initial application for a Regulated Marijuana Business license.

    a. Approval of a request for reinstatement of an expired Regulated Marijuana Business License does not guarantee approval of the Regulated Marijuana Business Licensee's initial application; and

    b. Approval of a request for reinstatement of an expired License does not waive the State Licensing Authority's authority to pursue administrative action on the expired License or initial application for a Regulated Marijuana Business License.

6. Final Agency Order on Initial Application for Regulated Marijuana Business.

    a. If the initial application for a Regulated Marijuana Business License submitted pursuant to this Rule is approved, the new Regulated Marijuana Business License will replace the reinstated license.

b. If the initial application for a Regulated Marijuana Business License submitted pursuant to this Rule is denied, the Licensee must immediately cease all operations including but not limited to, Transfer of Regulated Marijuana. *See* Rule 2-270 – Application Denial and Voluntary Withdrawal; 8-115 – Disposition of Unauthorized Regulated Marijuana; 8-130 – Administrative Warrants.

E. Voluntarily Surrendered or Revoked Licenses Not Eligible for Renewal. Any License that was voluntarily surrendered or that was revoked by a Final Agency Order is not eligible for renewal. Any Licensee who voluntarily surrendered its license or has had its License revoked by a Final Agency Order may only submit an initial application. The State Licensing Authority will consider the voluntary surrender or the Final Agency Order and all related facts and circumstances in determining approval of any subsequent initial application.

F. Licenses Subject to Ongoing Administrative Action. Licenses subject to an administrative action are subject to the requirements of this Rule. Licenses that are not timely renewed expire and cannot be renewed.

G. Documents Required at Renewal. A Regulated Marijuana Business and all Controlling Beneficial Owner-Entities must provide the following documents with every renewal application:

1. Any document required by Rule 2-220(A)(1) through (9) that has changed since the document was last submitted to the Division. It is a license violation affecting public safety to fail to submit any document that changed since the last submission for the purpose of circumventing the requirements of the Marijuana Code, or these Rules;

2. A copy of the Local Licensing Authority or Local Jurisdiction approval, licensure, and/or documentation demonstrating timely submission of and pending local license renewal application;

   a. For initial renewal applications submitted after August 8, 2023, the State Licensing Authority may renew a License that has not yet received Local Licensing Authority approval prior to the expiration of the state-issued License if:

      i. The Applicant submits a renewal application in accordance with this Rule; and

      ii. The Applicant submits written documentation verified by the Local Jurisdiction or Local Licensing Authority that demonstrates why local approval has not yet been obtained or a local license issued.

3. A list of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency, including but not limited to the United States Securities and Exchange Commission or the Canadian Securities Administrators;

4. A Regulated Marijuana Business operating under a single Entity name with more than one License may submit the following documents only once each calendar year on the first license renewal in lieu of submission with every license renewal in the same calendar year:

   a. Financial statements required by Rule 2-220(A)(10);

   b. If the Regulated Marijuana Business is a Publicly Traded Corporation, the most recent list of Non-Objecting Beneficial Owners possessed by the Regulated Marijuana Business;

c. A copy of all management agreement(s) the Regulated Marijuana Business has entered into regardless of whether the Person is licensed or unlicensed; and

d. Contracts, agreements, royalty agreements, equipment leases, financing agreement, or security contract for any Indirect Financial Interest Holder that is required to be disclosed by Rule 2-230(A)(3).

H. Controlling Beneficial Owner Signature. At least one Controlling Beneficial Owner shall sign the renewal application. However, other Controlling Beneficial Owners may be required to sign authorizations and/or requests to release information.

I. Accelerator Program Renewal Application Requirements.

1. Accelerator License Renewal. Accelerator Cultivator, Accelerator Manufacturer, and Accelerator Store Llicenses are required to be renewed annually. In addition to the documents and information required to be submitted with a renewal application, an Accelerator Licensee must also disclose to the Division copies of any agreements between the Accelerator Licensee and the Accelerator-Endorsed Licensee under which it operated during the previous year.

2. Accelerator-Endorsed Licensee Additional Renewal Requirements.

a. An endorsement issued to an Accelerator-Endorsed Licensee is required to be renewed annually.

b. At the time of submitting a renewal application for the endorsement, an Accelerator-Endorsed Licensee must submit the following:

i. The name and Llicense number of any Accelerator Licensee for which it served as an Accelerator-Endorsed Licensee during the previous year;

ii. The equity assistance proposal if there have been any updates or amendments since the proposal was last submitted to the Division;

iii. Copies of any agreements between the Accelerator-Endorsed Licensee and the Accelerator Licensee(s), including the equity partnership agreement; and

iv. Any required Local Jurisdiction approvals.

c. In addition to any other basis for denial of a renewal application, the State Licensing Authority may also consider the following facts and circumstances as additional bases for denial of an endorsement renewal application:

i. The Accelerator-Endorsed Licensee violated the terms of any equity partnership agreement it entered into with an Accelerator Licensee;

ii. The Accelerator-Endorsed Licensee ended the equity partnership agreement with an Accelerator Licensee prematurely; and

iii. The Accelerator-Endorsed Licensee provided false or misleading statements, records, or information to an Accelerator Licensee.

Basis and Purpose – 2-230

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(t), 44-10-203(2)(u), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-308, 44-10-309, and 44-10-316, C.R.S. Section 44-10-309, C.R.S., establishes varying disclosure requirements for Applicants and Licensees regarding disclosure of financial interests and ownership in a Regulated Marijuana Business. The purpose of this rule is to clarify information an Applicant or Licensee must disclose to the State Licensing Authority at the various levels, which include mandatory disclosure, disclosure in the State Licensing Authority's discretion, and disclosure for reasonable cause. This rule also provides factors that will be considered in determining whether a Regulated Marijuana Business exercised reasonable care and whether a Person is in control of a Regulated Marijuana Business.

2-230 – Disclosure of Financial Interests in a Regulated Marijuana Business

A. Mandatory Disclosures. Information required to be disclosed by section 44-10-309, C.R.S., must be identified in every initial, renewal, and change of owner application. Mandatory disclosures include, but are not limited:

1. All Regulated Marijuana Businesses (including Publicly Traded Corporations and Entities that are not Publicly Traded Corporations) must disclose an organizational chart including the identity and ownership percentages of all Controlling Beneficial Owners;

2. All Controlling Beneficial Owners.

a. For any Controlling Beneficial Owner that is an Entity (including Publicly Traded Corporations and entities that are not Publicly Traded Corporations):

i. The Controlling Beneficial Owner's Executive Officers; and

ii. Beneficial Owners of ten percent or more of the Controlling Beneficial Owner.

b. Natural persons:

i. Name;

ii. Address;

iii. Date of birth;

iv. Social Security Number or other Federal Government-issued identification number.

c. Qualified Private Fund: Organizational chart reflecting the identity and ownership percentages of the Qualified Private Fund's Executive Officers, investment advisers, investment adviser representatives, any trustee or equivalent, and any other Person that controls the investment in, or management or operations of, a Regulated Marijuana Business.

d. Trust: A copy of any documents required to establish the trust, a certification of the trust, and any additional documents necessary to demonstrate the type of trust, the identity and age of the trustee and all beneficiaries of the trust.

3. Any Person that is an Indirect Financial Interest Holder that:

a. Holds two or more indirect financial interests;

b. Is also a Passive Beneficial Owner; or

c. That is contributing debt financing, secured or unsecured, that has not previously been disclosed and exceeds fifty percent of the operating capital of the Regulated Marijuana Business or if the calculation yields a negative number. Operating capital is defined as total current and fixed assets less total liabilities (as presented on the balance sheet consistent with the business's past practices), measured as of the nearest month's end prior to the date of the applicable loan document(s).

B. Discretionary Disclosure. In his or her reasonable discretion, the State Licensing Authority may require disclosure following an initial or renewal application for a Regulated Marijuana business as follows:

1. For a Regulated Marijuana Business or a Controlling Beneficial Owner, neither of which is a Publicly Traded Corporation, its:

a. Affiliates;

b. Beneficial Owners of a Controlling Beneficial Owner;

2. Qualified Private Fund's Affiliates; and

3. Managers of a Controlling Beneficial Owner.

C. Reasonable Cause Disclosure. An Applicant will be notified by the State Licensing Authority of Reasonable Cause to require additional disclosure. The State Licensing Authority's notification will identify the facts and law supporting Reasonable Cause for the disclosure and the deadline for disclosure. The following may be required to be disclosed by the State Licensing Authority's notification:

1. An updated list of all Non-objecting Beneficial Owners in a Publicly Traded Corporation that is either a Regulated Marijuana Business or a Controlling Beneficial Owner reflecting ownership as of the date of request;

2. All Passive Beneficial Owners in a Regulated Marijuana Business that is not a Publicly Traded Corporation. If the Passive Beneficial Owner is not a natural person, the members of the board of directors, general partners, managing members, or Managers or Executive Officers and Beneficial Owners of ten percent or more of the Passive Beneficial Owner;

3. A list of all Beneficial Owners of a Qualified Private Fund;

4. All Indirect Financial Interest Holders of a Regulated Marijuana Business, and, for any Indirect Financial Interest Holder that is an Entity, the Beneficial Owners of ten percent or more of the Indirect Financial Interest Holder.

D. Affirmation of Reasonable Care.

1. Reasonable Care Affirmation for a Regulated Marijuana Business That is Not a Publicly Traded Corporation. A Regulated Marijuana Business that is not a Publicly Traded Corporation must affirm it exercised reasonable care to confirm its Passive Beneficial Owner(s), including any Qualified Institutional Investor(s), and Indirect Financial Interest Holder(s) are not Persons prohibited from holding a license under these Rules or the Marijuana Code. A Regulated Marijuana Business exercises reasonable care if it:

a. Receives documentation from each Passive Beneficial Owner, including any Qualified Institutional Investor, and each Indirect Financial Interest Holder affirming each is not a Person prohibited from holding a license by these Rules or the Marijuana Code; and

b. The Regulated Marijuana Business does not know or reasonably should not know facts that would contradict the Passive Beneficial Owner or Indirect Financial Interest Holder's affirmation.

2. Reasonable Care Affirmation for a Regulated Marijuana Business That is a Publicly Traded Corporation. A Regulated Marijuana Business that is a Publicly Traded Corporation must affirm it exercised reasonable care to confirm its Passive Beneficial Owners, including any Qualified Institutional Investor(s), both of which are Non-Objecting Beneficial Owners, and Indirect Financial Interest Holder(s) are not Person prohibited from holding a license by these Rules and the Marijuana Code. A Regulated Marijuana Business that is a Publicly Traded Corporation exercises reasonable care if it:

a. At least annually, checks a list of its Passive Beneficial Owners, including any Qualified Institutional Investor(s), both of which are Non-Objecting Beneficial Owners, against the Specially Designated Nationals and Blocked Persons List (SDN List) on the United States Treasury Office of Foreign Assets Control (OFAC) website and the Financial Industry Regulatory Authority (FINRA) website for Persons Barred by FINRA to determine if there are any prohibited Persons;

b. Receives documentation from its Indirect Financial Interest Holder(s) affirming each is not a Person prohibited from holding a license by these Rules or the Marijuana Code; and

c. The Regulated Marijuana Business does not know or reasonably should not know facts that would contradict the Indirect Financial Interest Holder's affirmation.

E. Control. The State Licensing Authority will consider all facts and circumstances in determining whether a Person has Control of a Regulated Marijuana Business or is a Controlling Beneficial Owner by virtue of common control.

1. Non-Exhaustive Factors. Non-exhaustive facts and circumstances that will be considered when evaluating Control include, but are not limited to:

a. The Person's percentage of ownership, if any;

b. The Person's ability to influence the decision of the Regulated Marijuana Business;

c. The Person is a Manager of the Regulated Marijuana Business;

d. The Person has a close relationship, familial tie, or common purpose or motive with one or more Persons in Control of the Regulated Marijuana Business;

e. The Person has substantial business relationship(s) with the Regulated Marijuana Business;

f. The Person has the ability to control the proxy machinery or to win a proxy contest;

g. The Person is a primary creditor of the Regulated Marijuana Business; or

h. The Person is the original incorporator of the Regulated Marijuana Business.

2. Totality of the Evidence. The State Licensing Authority may consider the totality of the evidence when determining whether a Person has Control of a Regulated Marijuana Business or is a Controlling Beneficial Owner by virtue of common control.

Basis and Purpose – 2-235

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(2)(c), 44-10-203(2)(ee), 44-10-309, 44-10-310, and 44-10-312(4), C.R.S. Section 44-10-310, C.R.S., requires that persons disclosed or who should have been disclosed to the State Licensing Authority obtain a finding of suitability from the State Licensing Authority. The purpose of this rule is to explain the conditions under which a Person is subject to either a mandatory finding of suitability or a finding of suitability for reasonable cause, to identify exemptions from an otherwise required finding of suitability and to identify the information and documents that, at a minimum, must be submitted in connection with any Person's request for a finding of suitability.

2-235 – Suitability

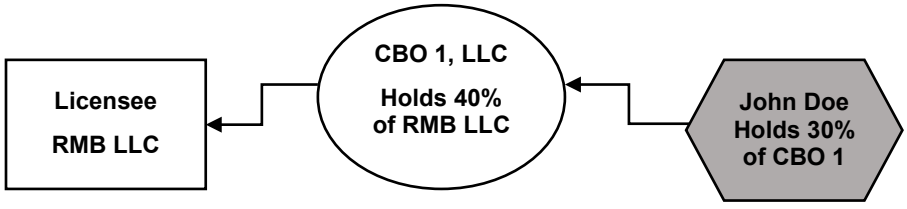
A. Persons Subject to a Mandatory Finding of Suitability for Regulated Marijuana Businesses That Are Not Publicly Traded Corporations.

1. Except as provided in subparagraph (A)(1)(a), any Person intending to become a Controlling Beneficial Owner by submitting an initial application for any Regulated Marijuana Business that is not a Publicly Traded Corporation must first obtain a finding of suitability from the State Licensing Authority.

a. Members of the Board of Directors and Executive Officers of a Regulated Marijuana Business. An individual who is a Controlling Beneficial Owner because he or she is a member of the board of directors or an Executive Officer of a Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.

2. Indirect Ownership of Ten-Percent or More Owner's Interests in a~~n Entity~~Regulated Marijuana Business.

a. For a Controlling Beneficial Owner that is an Entity, the Entity's request for finding of suitability must include all information necessary for the State Licensing Authority to determine whether that Entity's Executive Officers and any Person that directly or indirectly owns ten percent or more of the Owner's Interest in the Regulated Marijuana Business are suitable. For example, assuming the scenario depicted below, Licensee RMB LLC has one-thousand outstanding ownership interests and CBO 1, LLC owns 400 of those ownership interests. John Doe owns 30% of CBO 1, LLC. Therefore, John Doe indirectly owns 12% of the outstanding ownership interests of Licensee RMB LLC, and must apply to the State Licensing Authority for a finding of suitability.



3. Any Person that has not received a finding of suitability and who intends to become a Controlling Beneficial Owner of a Regulated Marijuana Business that is not a Publicly Traded Corporation must submit their request for a finding of suitability prior to or contemporaneously with the change of owner application, unless exempt from the change of owner application requirement under Rule 2-245(C).

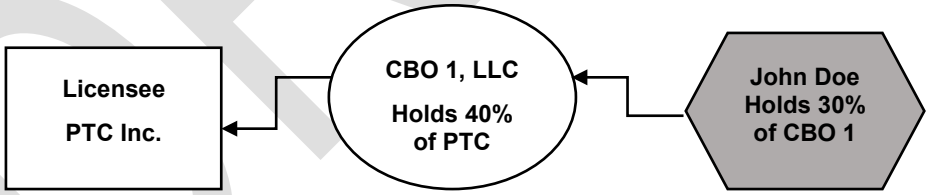
4. For a Controlling Beneficial Owner that is a trust, the trust's request for a finding of suitability must include all documents and information required or requested by the State Licensing Authority to permit a determination of whether or not the trustee and any beneficiary who may exercise control over the trust is suitable. A trust will not be found suitable if any person prohibited by section 44-10-307 is the trustee, otherwise controls the trust, or is positioned to receive distributions from the trust while a person prohibited.

B. Persons Subject to a Mandatory Finding of Suitability for Regulated Marijuana Businesses That Are Publicly Traded Corporations.

1. The following Persons must apply to the State Licensing Authority for a finding of suitability:

a. Any Person that becomes a Controlling Beneficial Owner of any Regulated Marijuana Business that is a Publicly Traded Corporation; and

b. Any Person that indirectly Beneficially Owns ten percent or more of the Regulated Marijuana Business that is a Publicly Traded Corporation through direct or indirect ownership of its Controlling Beneficial Owner. For example, assuming the scenario depicted below, Licensee PTC Inc. has one-million shares of outstanding Securities and CBO 1 owns 400,000 of those securities. John Doe owns 30% of CBO 1. Therefore, John Doe indirectly owns 12% of the outstanding securities of Licensee PTC Inc., and must apply to the State Licensing Authority for a finding of suitability.



2. For a Controlling Beneficial Owner that is an Entity, the Entity's request for finding of suitability must include all information necessary for the State Licensing Authority to determine whether its Executive Officers and any Person that indirectly owns ten percent or more of the Owner's Interest in the Regulated Marijuana Business are suitable.

3. Timing of Request for Finding of Suitability Involving Publicly Traded Corporation.

a. Unless exempted under Rule 2-235(E), all Persons that will be a Controlling Beneficial Owner in a Regulated Marijuana Business that is entering into a Publicly Traded Corporation transaction described in Rule 2-245(~~C~~B)(1) must

first obtain a finding of suitability by the State Licensing Authority before the transaction can close or the public offering can occur.

b. A Person who becomes a Controlling Beneficial Owner in a Regulated Marijuana Business that is a Publicly Traded Corporation must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming a Controlling Beneficial Owner.

c. An individual who is a Controlling Beneficial Owner because he or she is a member of the board of directors or an Executive Officer of a Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.

C. Finding of Suitability for Reasonable Cause. For Reasonable Cause, any other Person that was disclosed or should have been disclosed pursuant to subsections 44-10-309(1) or (2) or that was required to be disclosed based on previous notification of Reasonable Cause must submit a request to the State Licensing Authority for a finding of suitability. Any Person required to submit a request for a finding of suitability pursuant to this Rule must submit such request within 45 days from notice of the State Licensing Authority's determination of Reasonable Cause for the finding of suitability.

D. Information Required in Connection with a Request for a Finding of Suitability. When determining whether a Person is suitable or unsuitable for licensure, the State Licensing Authority may consider the Person's criminal character or record, licensing character or record, or financial character or record. To consider a Person's criminal character or record, licensing character or record, and financial character or record, all requests for a finding of suitability must, at a minimum, be accompanied by the following information:

1. Criminal Character or Record:

a. A set of the natural person's fingerprints for purposes of a fingerprint-based criminal history record check.

2. Licensing Character or Record:

a. Affirmation that the Person is not prohibited from holding a license under section 44-10-307, C.R.S.

b. A list of all Colorado Department of Revenue-issued business licenses held in the three years prior to submission of the request for a finding of suitability;

c. A list of all Department of Regulatory Agencies business, professional, or occupational licenses held in the three years prior to submission of the request for a finding of suitability;

d. A list of any marijuana business or personal license(s) held in any other state or territory of the United States or District of Columbia or another country, where such license is or was at any time subject to a denial, suspension, revocation, surrender, or equivalent action by the licensing agency, commission, board, or similar authority; and

e. Disclosure of any civil lawsuits in which the Person was named a party where pleadings included allegations involving any Regulated Marijuana Business.

3. Financial Character or Record:

a. Disclosure of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency other than the United States Securities Exchange Commission;

b. Account Statements or Property Ownership Documents Required.

i. If a Person is submitting a request for a finding of suitability to acquire ten percent or more of the Owner's Interest in a Regulated Marijuana Business and has identified both the source of funds or property and the Regulated Marijuana Business License that will be acquired at the time of the request for the finding of suitability, then the Person shall also include, copies of the Person's financial account statements for the preceding one-hundred eighty days for any accounts serving as a source of funding used to acquire the Owner's Interest in the Regulated Marijuana Business; or, if the Person is contributing one or more asset(s) to the Regulated Marijuana Business in exchange for the Owner's Interests, documents establishing the Person has owned such asset(s) for the preceding one-hundred eighty days.

ii. If a Person has not identified both the source of funding or property and the Regulated Marijuana Business License that will be acquired, then the Person can submit a request for a finding of suitability without account statements or property ownership documents.

iii. When a Person submits a Change of Controlling Beneficial Owner or new Regulated Marijuana Business License application, the Person shall also provide account statements for the funds that will be used to acquire the Owner's Interest in the Regulated Marijuana Business License or the property ownership documents for the preceding one hundred eighty (180) days.

E. Exemptions from a Finding of Suitability.

1. The following Persons are exempt from an otherwise required finding of suitability:

a. Any Person that currently possesses an approved Owner License issued by the State Licensing Authority and such Owner License has not, in the preceding 365 days, been subject to suspension or revocation.

2. Exemptions from an otherwise required finding of suitability are limited to those listed in this Rule. The State Licensing Authority will consider other factors that may inform amendments to this Rule through the Department's formal rulemaking session.

F. Timing to Approve or Deny a Request for Finding of Suitability. Absent Reasonable Cause, the State Licensing Authority must approve or deny a request for a finding of suitability within 120 days from the date of submission of the request for such finding, where such request was accompanied by all information required under subsection (D) of this Rule.

G. Executive Officer Considerations. Whether an individual is an Executive Officer subject to a mandatory finding of suitability is based on the definition in these rules and the facts and

circumstances. In determining whether an individual is an Executive Officer, the State Licensing Authority will consider the following, non-exhaustive factors:

1. Title is not dispositive, however, the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, president, the General Counsel, and any individual with similar policy making authority are Executive Officers;

2. The level of decision-making authority the individual possesses;

3. The Controlling Beneficial Owner and/or Regulated Marijuana Business's organizational chart; and

4. Any relevant guidance from the United States Securities and Exchange Commission or similar securities regulator, securities rules or securities case law.

H. Findings of Suitability.

1. Finding of Suitability. A finding of suitability other than for a Social Equity Licensee is valid for one year from the date it is issued by the State Licensing Authority. If more than one year has passed since the State Licensing Authority issued a finding of suitability to a Person other than for a Social Equity Licensee and such Person has not during that time applied to become a Controlling Beneficial Owner of a Regulated Marijuana Business pursuant to an initial business license application or change of owner application, then such Person shall submit a new request for finding of suitability to the State Licensing Authority and obtain a new finding of suitability before submitting any application to become a Controlling Beneficial Owner of a Regulated Marijuana Business.

2. Finding of Suitability for Social Equity Licensees. A finding of suitability for Social Equity License Applicants under Rule 2-220(C) is valid for two years from the date it is issued by the State Licensing Authority. If more than two years has passed since the State Licensing Authority issued the finding of suitability and such Social Equity Licensee has not during that time applied to become a Controlling Beneficial Owner of a Regulated Marijuana Business, then such Social Equity Licensee shall submit a new request for finding of suitability to the State Licensing Authority and obtain a new finding of suitability before submitting any application to become a Controlling Beneficial Owner of a Regulated Marijuana Business.

Basis and Purpose – 2-240

The statutory basis for this rule includes but is not limited to sections 44-10-103(53), 44-10-203(2)(ee)(C), 44-10-309(3), and 44-10-310(10), C.R.S. The purpose of this rule is to clarify factors the State Licensing Authority will consider when determining whether reasonable cause exists to require disclosure, to require a finding of suitability or to extend the 120-day deadline for granting or denying a request for a finding of suitability.

2-240 – Factors Considered in Determining Reasonable Cause for Disclosure, Finding of Suitability, and Extension of 120 Day Deadline for Finding of Suitability

A. Non-Exhaustive Factors Informing Reasonable Cause Considerations. The State Licensing Authority may consider the following non-exhaustive factors when evaluating whether Reasonable Cause exists for disclosure, requiring a reasonable cause finding of suitability or extension of time to provide a finding of suitability:

1. The Person provided materially inaccurate or incomplete documents to the Division;

2. The Person failed to provide required documents to the Division;

3. The request for a finding of suitability is sufficiently complex such that a determination cannot be completed within the 120-day deadline specified;

4. Information that an undisclosed Person is controlling or has the ability to control the Regulated Marijuana Business;

5. Information indicating one or more Persons prohibited holds an interest in the Regulated Marijuana Business;

6. Inability to obtain documents or information expected to be available from third-parties or publicly available sources;

7. The Person interfered with, obstructed, or impeded a Division investigation; or

8. The Person failed to make any filing required by a securities regulator or securities exchange that has regulatory oversight over the Person.

Basis and Purpose – 2-245

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(1)(d), 44-10-203(1)(k), 44-10-203(2)(ee)(I)(A) and (E), 44-10-203(7), 44-10-308(3)(b), 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-505(1)(a), and 44-10-605(1)(a), C.R.S. The purpose of this rule is to define the application process and conditions an Applicant or Licensee must meet when changing Beneficial Ownership in a Regulated Marijuana Business. This rule further describes requirements in the event of a dispute between the Controlling Beneficial Owners of a Regulated Marijuana Business.

2-245 – Change of Controlling Beneficial Owner Application or Notification

A. Application for Change of Controlling Beneficial Owner(s) – Not a Publicly Traded Corporation.

1. Division Approval Required Prior to Transfer of Owner's Interest. Unless excepted pursuant to subparagraph (C) of this Rule, a Regulated Marijuana Business that is not a Publicly Traded Corporation must obtain Division approval before it transfers the Owner's Interests of any Controlling Beneficial Owner(s) or before a trust that is a Controlling Beneficial Owner changes its trustee.

2. Documents Required. Any change of owner application regarding a Controlling Beneficial Owner of a Regulated Marijuana Business that does not involve a Publicly Traded Corporation must include the following documents:

a. Asset purchase agreement, merger, sales contract, agreement, or any other document necessary to effectuate the change of owner;

b. Request for a finding of suitability for each proposed Controlling Beneficial Owner(s) who has not already submitted a request for a finding of suitability, who has not already been found suitable, or who does not already hold an Owner License;

c. Operating agreement, by-laws, partnership agreement, or other governing document(s) as will apply to the Regulated Marijuana Business if the change of owner application is approved;

d. Request for voluntary surrender form of the Owner License of any Controlling Beneficial Owner that will not remain a Controlling Beneficial Owner, or Passive Beneficial Owner electing to hold an Owner License in a Regulated Marijuana Business if the change of owner application is approved; and

e. Copy of current Medical Marijuana or Retail Marijuana State Sales Tax or Wholesale license and any other documents necessary to verify tax compliance.

3. Licensee Initiates Change of Owner for Permitted Economic Interests Issued Prior to January 1, 2020. All natural persons holding a Permitted Economic Interest who seek to become a Controlling Beneficial Owner are subject to this Rule. The Regulated Marijuana Business must initiate the change of owner process for a natural person holding a Permitted Economic Interest who seeks to convert its interest and become a Controlling Beneficial Owner in a Regulated Marijuana Business. Prior to submitting a change of owner application, the Permitted Economic Interest holder must obtain a finding of suitability pursuant to Rule 2-235 including any required criminal history record check. Permitted Economic Interest holders who fail to obtain a finding of suitability to become a Controlling Beneficial Owner may remain as a Permitted Economic Interest holder.

B. Change of Owner Involving a Publicly Traded Corporation. This Rule applies to transactions involving any Publicly Traded Corporation.

1. Publicly Traded Corporation Transactions. A Regulated Marijuana Business may transact with a Publicly Traded Corporation in the following ways:

a. Merger with a Publicly Traded Corporation. A Regulated Marijuana Business or a Controlling Beneficial Owner that intends to receive, directly or indirectly, an investment from a Publicly Traded Corporation, or that intends to merge or consolidate with a Publicly Traded Corporation, whether by way of merger, combination, exchange, consolidation, reorganization, sale of assets or otherwise, including but not limited to any shell company merger.

b. Investment by a Publicly Traded Corporation. A Regulated Marijuana Business that intends or that has a Controlling Beneficial Owner that intends to transfer, directly or indirectly, ten percent or more of the Securities in the Regulated Marijuana Business to a Publicly Traded Corporation, whether by sale or other transfer of outstanding Securities, issuance of new Securities, or otherwise.

c. Public Offering. A Regulated Marijuana Business that intends or that has a Controlling Beneficial Owner that intends to become, directly or indirectly, a Publicly Traded Corporation, whether by effecting a primary or secondary offering of its Securities, uplisting of outstanding Securities, or otherwise.

2. Required Finding(s) of Suitability.

a. Pre-Transaction Findings of Suitability Required. Any Person intending to become a Controlling Beneficial Owner in a Regulated Marijuana Business in connection with any transaction identified in subparagraph (B)(1)(a) through (c) above, must obtain a finding of suitability prior to the Publicly Traded Corporation transaction closing or becoming effective.

b. Ongoing Suitability Requirements. Any Person who becomes a Controlling Beneficial Owner of a Publicly Traded Corporation that is a Regulated Marijuana Business must apply to the State Licensing Authority for a finding of suitability or an exemption from a finding of a suitability pursuant to Rule 2-235 within forty-

five days of becoming a Controlling Beneficial Owner. A Publicly Traded Corporation that is a Regulated Marijuana Business must notify any Person that becomes a Controlling Beneficial Owner of the suitability requirements as soon as the Regulated Marijuana Business becomes aware of the ownership subjecting the Person to this requirement; however, the Controlling Beneficial Owner's obligation to timely request the required finding of suitability is independent of, and unaffected by, the Regulated Marijuana Business's failure to make the notification.

3. Change of Owner Application Required. A Licensee entering into a transaction permitted in subparagraph (B)(1)(a)-(c) above with Publicly Traded Corporation must submit any required change of owner application to the Division prior to the transaction closing. The change of owner application may be submitted simultaneously with the requests for finding(s) of suitability required by subparagraph (B)(2) or after the request(s) for findings of suitability were submitted to the Division.

4. Mandatory Disclosure of Required, United States Securities and Exchange Commission, Canadian Securities Administrators and/or Securities Exchange Filings. A Regulated Marijuana Business and any Controlling Beneficial Owner that is required to file any document with the United States Securities and Exchange Commission, the Canadian Securities Administrators, any other similar securities regulator or any securities exchange regarding any change of owner in subparagraphs (B)(1)(a) through (c) above must also provide a notice to the Division at the same time as the filing with the United States Securities and Exchange Commission, the Canadian Securities Administrators or the securities exchange.

5. Ordinary Broker Transactions. Resales or transfers of Securities of a Publicly Traded Corporation that is a Regulated Marijuana Business or Controlling Beneficial Owner or Passive Beneficial Owner in ordinary broker transactions through an established trading market do not require a change of owner application or prior approval from the State Licensing Authority.

C. Exemptions to the Change of Owner Application Requirement.

1. Entity Conversions or Change of Legal Name. A Regulated Marijuana Business or a Controlling Beneficial Owner may combine with or convert, including but not limited to under sections 7-90-201 et seq., C.R.S., for the exclusive purpose of changing its Entity jurisdiction to one of the states or territories of the United States or the District of Columbia, its Entity type or change the legal name of an Entity without filing a change of owner application. These exemptions apply only if the Controlling Beneficial Owners and their Owner's Interests will remain the same after the combination, conversion, or change of legal name, and there will not be any new Controlling Beneficial Owners (individuals or Entities). Within fourteen days of the combination, conversion, or change of legal name the Regulated Marijuana Business must submit the following to the Division:

a. A copy of the transaction documents;

b. Documents submitted to the Colorado Secretary of States;

c. Any document submitted to the secretary of state or similar regulator if the Entity is organized under the laws of a state of the United States other than Colorado, a territory of the United States, or the District of Columbia;

d. Identification of the Regulated Marijuana Business's or Controlling Beneficial Owner's registered agent;

e. Identification of any Passive Beneficial Owner and Indirect Financial Interest Holder for which disclosure is required by Rule 2-230; and

f. The fee required by Rule 2-205(F)(2)(b).

2. Reallocation of Owner's Interests Among Controlling Beneficial Owners. A Regulated Marijuana Business may reallocate Owner's Interests among existing Controlling Beneficial Owners holding valid Owner Licenses if it provides notification of the reallocation to the Division with its next application submission as long as there are no new Controlling Beneficial Owners. Reallocations that are solely a result of adding, removing, or changing Passive Beneficial Owners are not subject to this Rule 2-245(C)(2), but are subject to the requirements in Rule 2-245(C)(5). A reallocation under this Rule is subject to the following requirements:

a. All Owner's Interests of a Controlling Beneficial Owner may be reallocated to other existing Controlling Beneficial Owners;

b. Only consensual reallocations where all Controlling Beneficial Owners whose ownership percentages will change agree to the reallocation are permitted under this Rule. Proof that the transfer was consensual may include affirmation from all Controlling Beneficial Owners for which the Owner's Interests were reallocated in the required disclosure at the next application submission.

c. If any Controlling Beneficial Owner will not hold any Owner's Interest in a Regulated Marijuana Business following the reallocation, that Controlling Beneficial Owner shall voluntarily surrender his or her Owner's License and identification badge within 30 days of the reallocation;

d. All Controlling Beneficial Owners remain responsible for all actions of the Regulated Marijuana Business while they were a Controlling Beneficial Owner and are subject to administrative action based on the same regardless of the reallocation; and

e. Disclosure and submission of the fee required by Rule 2-205(F)(2)(b) at the next application submission which shall not be longer than 365 days.

3. Passive Beneficial Owner Licensed Prior to August 1, 2019. A Passive Beneficial Owner who was issued an Owner License prior to August 1, 2019, and who has continuously maintained that license, is not required to submit a change of owner application if he or she becomes a Controlling Beneficial Owner in the business license(s) with which the Owner License is associated but must disclose and submit the fee required by Rule 2-205(F)(2)(b) at the next application submission, which shall not be longer than 365 days.

4. Change of Executive Officer or Member of the Board of Directors. A change of owner application is not required for a change of an Executive Officer or member of the board of directors of a Regulated Marijuana Business or an Owner Entity License of a Regulated Marijuana Business so long as the new Executive Officer or member of the board of directors does not possess ten percent or more of the Owner's Interest in the Regulated Marijuana Business or is otherwise Controlling the Regulated Marijuana Business. However, a change of Executive Officer or member of the board of directors is subject to the following requirements:

a. Any such Executive Officer or member of the board of directors of the Regulated Marijuana Business must notify the Division of the new Controlling Beneficial Owner, Executive Officer, or member of the board of directors and submit a

request for a finding of suitability as required by Rule 2-235(A)(1)(a) unless exempt under subparagraph (b) of this Rule 2-245(C)(4); or,

b. If exempt from a finding of suitability pursuant to Rule 2-235(E), the Regulated Marijuana Business subject to any such change of the Executive Officer or members of their board of directors, whether adding or removing, must provide notice to the Division of the new Controlling Beneficial Owner within forty-five days.

c. The fee required by Rule 2-205(F)(2)(b).

5. Change of Passive Beneficial Owner. Persons are not required to submit an application or obtain prior approval of their ownership, or provide notification, if: (1) the person was not a Direct Beneficial Interest Owner prior to November 1, 2019, (2) the Person will remain a Passive Beneficial Owner after the acquisition of Owner's Interests is complete, (3) the transfer will not create any previously undisclosed Controlling Beneficial Owner, and (4) disclosure is not otherwise required by section 44-10-309, C.R.S., or Rule 2-230.

D. Change of Owner Requirements, Restrictions and Procedures Applicable to All Regulated Marijuana Businesses.

1. Application Signature Requirements. All applications for change of Controlling Beneficial Owner(s) must be executed by every Controlling Beneficial Owner whose Owner's Interests are proposed to change and any Person proposed to become a Controlling Beneficial Owner(s). Controlling Beneficial Owners whose Owner's Interest will not change are not required to execute the change of owner application; however, at least one Controlling Beneficial Owner and all Persons proposed to become a Controlling Beneficial Owner must execute every change of owner application.

2. Process for Approval. Upon completion of the investigation of a change of owner application, the State Licensing Authority will issue a contingent approval letter. However, the State Licensing Authority will not issue the state license until:

a. Local Approval Required. If local approval is required, the proposed Controlling Beneficial Owner(s) demonstrates to the State Licensing Authority that local approval has been obtained and notifies the State Licensing Authority of the date by which the change of owner will be completed, which must be within thirty days of the notification. The proposed Controlling Beneficial Owner's notification to the Division must be within 365 days of the issuance of the Division's contingent approval letter.

i. If a Local Licensing Authority or Local Jurisdiction requires a change of owner application and that application is denied, the State Licensing Authority will deny the State change of owner application;

b. No Local Approval Required. If local approval is not required, the proposed Controlling Beneficial Owner(s) demonstrates that such approval is not required and notifies the State Licensing Authority of the date by which the change of owner will be completed, which must be within thirty days of the of the notification. However, the proposed Controlling Beneficial Owner's notification to the Division must be made within 365 days of issuance of the Division's contingent approval letter.

c. Contingent Approval. Contingent approval pursuant to this subparagraph (D)(2) is valid for one year from the date it is issued by the State Licensing Authority. If

more than one year has passed since the State Licensing Authority issued contingent approval to a Person and such Person during that time has not met the requirements of Rule 2-245(D)(2)(a) or 2-245(D)(2)(b) to complete the Change of Beneficial Owner Application, then such Person shall submit a new Change of Controlling Beneficial Owner Application. The State Licensing Authority in their discretion may extend the contingent approval upon written request.

3. Operational Restrictions Pending All Required Approvals. Unless otherwise provided under these Rules, any proposed new Controlling Beneficial Owner cannot operate the Regulated Marijuana Business for which it intends to become a Controlling Beneficial Owner until it receives any required finding of suitability and is issued all approvals and/or license(s) pursuant to any change of owner application required by this Rule. Controlling Beneficial Owners that have already been approved in connection with ownership of the Regulated Marijuana Business may continue to operate the Regulated Marijuana Business. A violation of this requirement is grounds for denial of the change of owner application, may be a violation affecting public safety, and may result in disciplinary action against existing license(s).

4. Modifications to Change of Owner Applications. If anything in a change of owner application is modified or changed after the Division approves the application, the Licensee must submit a new change of owner application, unless exempted by the Division prior to completing the change of owner.

5. Regulated Marijuana Business Subject to Investigation or Administrative Action. If a Regulated Marijuana Business or any of its Controlling Beneficial Owner(s) apply for a change of owner and is involved in an administrative investigation or administrative action, the following may apply:

   a. The change of owner application may be delayed or denied until the administrative action is resolved; or

   b. If the change of owner application is approved by the Division, the transferor, the transferee, or both may be responsible for the actions of the Regulated Marijuana Business and its prior Controlling Beneficial Owner(s), and subject to discipline based upon the same.

6. Repealed.

E. Refundable and Nonrefundable Deposits Permitted. A proposed Controlling Beneficial Owner may provide a selling Controlling Beneficial Owner with a refundable or nonrefundable deposit in connection with a change of owner application.

F. Controlling Beneficial Owner Dispute.

1. In the event of a dispute between Controlling Beneficial Owner(s) not involving divestiture under Rule 2-275 and precluding or otherwise impeding the ability to comply with these Rules, a Regulated Marijuana Business that is not a Publicly Traded Corporation must submit a change of owner application, notification pursuant to subparagraph (C) of this Rule, or initiate mediation, arbitration, or a judicial proceeding within 90 days of the dispute. The 90-day period may be extended for an additional 90 days upon a showing of good cause by the Regulated Marijuana Business.

2. A Regulated Marijuana Business that is not a Publicly Traded Corporation must submit a change of owner application or notification pursuant to subparagraph (C) of this Rule

within forty-five days of entry of a final court order, final arbitration award, or full execution of a settlement agreement altering the Controlling Beneficial Owner(s) of a Regulated Marijuana Business. Any change of owner application or notification based on a final court order, final arbitration award, or fully executed settlement agreement must include a copy of the order or settlement agreement and remains subject to approval by the Division. In this circumstance, the change of owner application or notification needs to be executed by at least one remaining Controlling Beneficial Owner.

3. If mediation, arbitration, or a judicial proceeding is not timely initiated, or if a change of owner application or notification pursuant to subparagraph (C) of this Rule is not timely submitted following entry of a final court order, final arbitration award, or full execution of a settlement agreement altering the Controlling Beneficial Owner(s) of a Regulated Marijuana Business that is not a Publicly Traded Corporation, the Regulated Marijuana Business and its Owner Licensee(s) may be subject to fine, suspension, or revocation of their license(s).

Basis and Purpose – 2-250

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(2)(ee)(I), 44-10-203(7), and 44-10-309(6), C.R.S. The purpose of this rule is to require notification to the State Licensing Authority of any filing with a securities regulator by an Applicant or Licensee.

2-250 – Regulated Marijuana Business that is a Publicly Traded Corporation – Notification of Non-Confidential Securities Filings

A. A Regulated Marijuana Business that is a Publicly Traded Corporation must provide notice on Division forms within two business days of any non-confidential filing with the United States Securities and Exchange Commission, the Canadian Securities Administrators, any other securities regulator, or any security exchange on which the Securities are listed or traded. The notice must identify the title of the document and include a hyperlink to the website where the document is publicly available (example EDGAR or SEDAR link for the Publicly Traded Corporation).

B. In addition to any other administrative or investigative requests or inquiries, the Division may contact a Regulated Marijuana Business that is a Publicly Traded Corporation to obtain clarification of a securities filing.

C. This Rule is currently limited to require notice of securities filings that are not confidential. However, this Rule may be evaluated during subsequent rulemaking proceedings and/or in connection with development of a policy regarding confidential securities filings.

Basis and Purpose – 2-255

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(e), 44-10-203(2)(w), 44-10-203(2)(cc), 44-10-305, 44-10-313(8), and 44-10-313(13), C.R.S. The purpose of this rule is to clarify the application process for changing location of a Licensed Premises. This rule also provides the requirements for a Medical Marijuana Cultivation Facility or a Retail Marijuana Cultivation Facility to obtain a transition permit.

2-255 – Change of Location of a Regulated Marijuana Business

A. Application Required Before Changing Location of Licensed Premises. A Regulated Marijuana Business must apply for and receive Division approval before changing the location of its Licensed Premises.

B. Application Requirements. A change of location application must include the following:

1. At least one signature of a Controlling Beneficial Owner and representation that the signing Controlling Beneficial Owner(s) is/are authorized to submit the application on behalf of the Regulated Marijuana Business.

2. Evidence the Local Licensing Authority and/or Local Jurisdiction in which the Regulated Marijuana Business proposes to move have approved the proposed new location.

3. The deed, lease, sublease, rental agreement, contract, or any other document(s) establishing the Licensee is, or will be, entitled to possession of the premises for which the application is made.

4. Legible and accurate diagram for the proposed licensed Premises that complies with the requirements of the 3-200 Series Rules. The diagram must include a plan for the proposed Licensed Premises and a separate plan for the security/surveillance plan including camera location, number and direction of coverage. If the diagram is larger than 8.5 inches x 11 inches, the Applicant must also provide the diagram in a portable document format (.pdf).

C. Change of Location Permit Required.

1. A Regulated Marijuana Business cannot change the location of its Licensed Premises until it receives a change of location permit from the Division.

2. The permit is effective on the date of issuance, and the Licensee must, within 120 days, change the location of its Regulated Marijuana Business to the place specified in the change of location permit and at the same time cease to operate a Regulated Marijuana Business at the former location. For good cause shown, the 120-day deadline may be extended an additional 120 days.

3. If the Regulated Marijuana Business does not change the location of its Licensed Premises within the time period granted by the Division, including any extension, the Regulated Marijuana Business must submit a new application, pay the change of location fee, and receive a new change of location permit prior to changing the location of its Licensed Premises.

4. A Regulated Marijuana Business cannot operate or exercise any of the privileges of its license(s) in both locations, unless a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility has received a transition permit.

D. Medical Marijuana Cultivation Facilities and Retail Marijuana Cultivation Facilities - Transition Permit. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility that has obtained an approved change of location from the State Licensing Authority may operate one License at two geographical locations for the purpose of transitioning operations from one location to the other, subject to the following requirements:

1. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility may apply for a transition permit and a change of location at the same time. The Division will not accept an application for a transition permit unless it is submitted prior to or concurrently with a change of location application. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility is prohibited from exercising the privileges of a transition permit until it has also received all required approvals for a change of location.

2. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility that has an approved change of location and a transition permit must comply with the following requirements:

    a. The total plants cultivated at both locations do not exceed any plant count limit imposed on the Licensee by the Marijuana Code and these rules;

    b. The Licensed Premises of both geographical locations comply with all surveillance, security, and inventory tracking requirements imposed by the Marijuana Code and these rules at the Rule 3-200 Series and 3-800 Series;

    c. Both geographical locations shall track all Regulated Marijuana plants in transition in the Inventory Tracking System to ensure proper tracking for taxation purposes;

    d. Operation at both geographical locations does not exceed 180 days, unless Licensee demonstrates good cause to extend the deadline an additional 180 days; and

    e. The Licensee obtains a transition permit pursuant to this Rule and any local permit or license, as required by the Local Licensing Authority or Local Jurisdiction.

3. Change of Location in the Same Local Jurisdiction. If the change of location is within the same local jurisdiction, the Licensee must:

    a. First obtain a transition permit pursuant to this Rule; and

    b. If required by the Local Licensing Authority or Local Jurisdiction, obtain a transition permit or other form of approval from the Local Licensing Authority or Local Jurisdiction.

4. Change of Location to a Different Local Jurisdiction. If the change of location is to a different local jurisdiction, the Licensee must:

    a. First obtain a license from the Local Licensing Authority or Local Jurisdiction where the Licensee intends to locate;

    b. Obtain a transition permit pursuant to this Rule; and

    c. If required by the Local Licensing Authority or Local Jurisdiction, obtain a transition permit or other form of approval from the Local Licensing Authority or Local Jurisdiction for the local jurisdiction where it intends to locate.

5. Conduct at either location may be basis for fine, suspension, revocation, or other sanction against the License.

E. Violation Affecting Public Safety. It is a violation affecting public safety if a Regulated Marijuana Business changes the location of its Licensed Premises without first obtaining a change of location permit from the Division, and any required approval(s) from the Local Licensing Authority and/or Local Jurisdiction.

Basis and Purpose – 2-260

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(e), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(h), 44-10-203(2)(w), 44-10-305, 44-10-313(8)(b), and 44-10-313(2) C.R.S. The purpose of this rule is to establish guidelines for changing, altering, modifying, or transitioning the Licensed Premises. This Rule 2-260 was previously Rules M and R 303, 1 CCR 212-1 and 1 CCR 212-2.

2-260 – Changing, Altering, or Modifying Licensed Premises

A. Application Required to Change, Alter, or Modify Licensed Premises. After obtaining a license, the Licensee shall make no physical change, alteration, or modification of the Licensed Premises that significantly alters the Licensed Premises or the usage of the Licensed Premises from the plans originally approved, without the Division's prior written approval and, written approval or written acknowledgement from the relevant Local Licensing Authority or Local Jurisdiction. The Licensee whose Licensed Premises are to be significantly changed is responsible for filing an application for approval on current forms provided by the Division. Changes to the Licensed Premises which do not require an application must be disclosed on a floorplan submitted with the Licensee's renewal application.

B. What Constitutes a Significant Change. This Rule does not exempt Licensees from complying with any Local Licensing Authority or Local Jurisdiction requirements regarding changes, alterations, or modifications to the Licensed Premises. Significant changes, alterations, or modifications requiring Division approval include, but are not limited to, the following:

1. Any increase or decrease in the total physical size or capacity of the Licensed Premises;

2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, walk-up window or drive-up window, when such common entryway, doorway, passage, walk-up or drive-up window alters or changes Limited Access Areas, such as the cultivation, harvesting, manufacturing, testing, or sale of Regulated Marijuana within the Licensed Premises; or

3. Any physical modification of the Licensed Premises which would require the installation of additional video surveillance cameras. *See* Rule 3-225 – Video Surveillance.

C. Attachments to Application. The Division and relevant Local Licensing Authority or Local Jurisdiction may grant approval for the types of changes, alterations, or modifications described herein upon the filing of an application by the Licensee and payment of any applicable fee. The Licensee must submit all information requested by the Division, including but not limited to, documents that verify the following:

1. The Licensee will continue to have possession of the Licensed Premises, as changed, by ownership, lease, or rental agreement; and

2. The proposed change conforms to any local restrictions related to the time, manner, and place of Regulated Marijuana Business regulation.

D. Application Required to Change Mobile Premises. After obtaining a License, a Marijuana Hospitality Business Licensee must apply for Division approval to change the Mobile Premises. The Licensee whose Mobile Premises is to be changed is responsible for filing an application for approval on current forms provided by the Division.

1. The Application to change Mobile Premises must include the following:

a. Documentation that the Mobile Premises is owned or leased by the Marijuana Hospitality Business;

b. The vehicle manufacturer/make, model, and model year associated with the Mobile Premises;

c. The vehicle identification number (VIN) associated with the Mobile Premises;

d. The Colorado license plate number and copy of the registration associated with the Mobile Premises;

e. If applicable, the automatic vehicle identification tag associated with the Mobile Premises;

f. A copy of a valid permit issued by the Public Utilities Commission to the Marijuana Hospitality Business; and

g. Information demonstrating the proposed Mobile Premises meets the requirements in Rule 6-940(E).

Basis and Purpose – 2-265

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(2)(b)-(c), 44-10-203(2)(e), 44-10-203(2)(t)-(u), 44-10-203(2)(w), 44-10-307, 44-10-308(2), 44-10-313(6), 44-10-401(2)(c), 44-10-901(1), 24-76.5-101 *et seq*., C.R.S. Historically, natural persons who held an Owner's Interest in a Regulated Marijuana Business were required to hold an Associated Key License. This Rule transitions the Associated Key designation to an Owner License designation after August 1, 2019. The purpose of this rule is to clarify the requirements and procedures a Person must follow when applying for or possessing either an Owner License or an Employee License. This rule also identifies factors the State Licensing Authority will consider in determining whether a natural person is a resident and whether such person possess good moral character.

2-265 – Owner and Employee License: License Requirements, Applications, Qualifications, and Privileges

A. Repealed.

B. Owner Licenses Required.

1. Each Controlling Beneficial Owner must hold a valid Owner License.

2. If a Controlling Beneficial Owner is an Entity, then its Executive Officer(s) and any natural person who indirectly holds ten percent or more of the Owner's Interests in the Regulated Marijuana Business must also hold a valid Owner's License.

a. The existence of an Owner Entity does not relieve the Owner Licensees from responsibility for acts and violations of the Regulated Marijuana Business.

3. A Passive Beneficial Owner who is a natural person may elect to hold an Owner License and obtain an Owner Identification Badge provided that such Person agrees to be disclosed as holding an Owner's Interest in the Regulated Marijuana Business.

4. Only Controlling Beneficial Owners and Passive Beneficial Owners can obtain an Owner License.

C. Owner License and Identification Badge or Employee License and Identification Badge Required. The following natural persons must possess a valid Owner License and Identification Badge or an Employee License and Identification Badge:

1. Any natural person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, or delivers Regulated Marijuana or Regulated Marijuana Products as permitted by privileges of a Regulated Marijuana Business license;

2. Any natural person who has access to the Inventory Tracking System or a Regulated Marijuana Business point-of-sale system; and

3. Any natural person with unescorted access in the Limited Access Area.

D. Escort or Monitoring Required.

1. Any natural person in a Limited Access Area that does not have a valid Owner License and Identification Badge or an Employee License and Identification Badge is a visitor and must be escorted at all times by a person who holds a valid Owner License and Identification Badge or Employee License and Identification Badge. Failure by a Regulated Marijuana Business to continuously escort an individual who does not have a valid Owner License and Identification Badge or an Employee License and Identification Badge in the Limited Access Area is a license violation affecting public safety.

2. Patients, their caregiver, and consumers in a Restricted Access Area and third-party vendors in a Limited Access Area do not need to be escorted at all times but must be reasonably monitored to ensure compliance with these rules.

E. Employee License Required to Commence or Continue Employment. Any natural person required to obtain an Employee License by these rules must obtain such license before commencing activities permitted by an Employee License.

1. Conditional License. Applicants for an Employee License may be issued a conditional License and Identification Badge upon results of an initial investigation that demonstrates the Applicant is qualified to hold such License in compliance with Rule 2-215, subject to the following requirements:

i. Applications for a conditional Employee License must be submitted in person to the Division to facilitate the issuance and physical transfer of the conditional License to the Applicant. Applications for a conditional Employee License must be accompanied by the Conditional Employee License Fee in Rule 2-205.

ii. The Employee's application remains subject to a Notice of Denial pending the complete results of the Applicant's initial fingerprint-based criminal history record check.

iii. If the Division issues the Applicant a Notice of Denial, the Employee License Applicant shall return the conditional License and Identification Badge within seven (7) days of the Division's mailing of the Notice of Denial.

F. Owner License and Employee License Identification Badges Are Property of the State Licensing Authority. All Owner Licenses and Employee Licenses, and all Identification Badges are property of the State Licensing Authority.

G. Owner and Employee Initial and Renewal Applications Required. Owner Licensees and Employee Licensees must submit initial license applications and renewal applications on Division forms and in accordance with this Rule and Rules 2-215, 2-220, and 2-225.

H. Licenses Requiring Proof of Residency. Where a license issued by the State Licensing Authority requires the Applicant to establish Colorado residency, an Applicant may demonstrate residency by the following methods including, but are not limited to:

1. Current valid Colorado driver's license or current Colorado identification card with a current address; or

2. A government issued photo identification and two of the following documents showing the Applicant's correct name, current date, and current Colorado address:

   a. Utility bill or phone bill;

   b. Car registration;

   c. Voter registration card;

   d. Statement from a major creditor;

   e. Bank statement;

   f. Recent County tax notice;

   g. Recent contract/mortgage statement.

I. Owner License Qualifications and Privileges.

1. Owner License Qualifications. Each Controlling Beneficial Owner, or Passive Beneficial Owner who elects to be subject to disclosure and licensure, must meet the following criteria before receiving an Owner License:

   a. The Applicant is not prohibited from licensure pursuant to section 44-10-307, C.R.S.;

   b. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for Persons licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application;

   c. The Division has not received notice that the Applicant has failed to comply with a court or administrative order for current child support, child support debt, retroactive child support, or child support arrearages. If the Division receives notice of the Applicant's noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S., the application may be denied or delayed until the Applicant has established compliance with the order to the satisfaction of the state child support enforcement agency.

   d. Each Controlling Beneficial Owner required to hold an Owner License, and any Passive Beneficial Owner that elects to hold an Owner License, must be fingerprinted at least once every two years, and may be fingerprinted more often at the Division's discretion.

      i. Repealed.

   e. An Owner Licensee who exercises day-to-day operational control on the Licensed Premises of a Regulated Marijuana Business must possess an Identification Badge and must establish and maintain Colorado residency. Proof

of residency may be accomplished by submission of the documents identified in Rule 2-265(H). A Controlling Beneficial Owner will not be deemed to exercise day-to-day operational control by reason of holding a title defined as an Executive Officer.

2. Owner License Exercising Privileges of an Employee License. A natural person who holds an Owner License and Identification Badge may exercise the privileges of an Employee License in a Regulated Marijuana Business, subject to the following limitations:

   a. If the Owner Licensee is not a Controlling Beneficial Owner of the Regulated Marijuana Business for which he or she is seeking to exercise the privileges of an Employee License, the Owner Licensee may exercise such Employee License privileges regardless of that Person's residency.

   b. If the Owner Licensee is a Controlling Beneficial Owner of the Regulated Marijuana Business for which he or she is seeking to exercise the privileges of an Employee License, the Owner Licensee may only exercise such Employee License privileges if he or she is a Colorado resident.

3. Business License Required. A natural person cannot hold an Owner License without holding a Regulated Marijuana Business license, or without at least submitting an application for a Regulated Marijuana Business license.

J. Employee License Qualifications and Privileges.

1. Employee License Qualifications and Requirements. An Employee License Applicant must meet the following criteria before receiving an Employee License:

   a. The Applicant is not prohibited from licensure pursuant to section 44-10-307, C.R.S.;

   b. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for Persons licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.

   c. The Division has not received notice that the Applicant has failed to comply with a court or administrative order for current child support, child support debt, retroactive child support, or child support arrearages. If the Division receives notice of the Applicant's noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S., the application may be denied or delayed until the Applicant has established compliance with the order to the satisfaction of the state child support enforcement agency.

2. Medical and Retail Employee Licenses. A natural person who holds a current, valid Employee License and Identification Badge issued pursuant to the Marijuana Code may work in any Regulated Marijuana Business.

K. Owner Licensees and Employee Licensees Required to Maintain Licensing Qualification. An Owner Licensee or Employee Licensee's failure to maintain qualifications for licensure may constitute grounds for discipline, including but not limited to, suspension, revocation, or fine.

L. Evaluating a Natural Person's Good Moral Character Based on Criminal History.

1. In evaluating whether a Person is prohibited from holding a license pursuant to subsections 44-10-307(1)(b) or (c), C.R.S., based on a determination that the person's

criminal history indicates she or he is not of Good Moral Character, the Division will not consider the following:

a. The mere fact a person's criminal history contains an arrest(s) or charge(s) of a criminal offense that is not actively pending;

b. A conviction of a criminal offense in which the Applicant/Licensee received a pardon;

c. A conviction of a criminal offense which resulted in the sealing or expungement of the record;

d. A conviction of a criminal offense in which a court issued an order of collateral relief specific to the application for state licensure;

e. A civil judgment or criminal conviction, discipline, or other sanction imposed under the laws of another state regarding consumption, possession, cultivation, or processing of marijuana that is lawful and consistent with professional conduct and standards of care within the State of Colorado; or

f. The Applicant has been adjudicated for committing a delinquent act in a juvenile proceeding.

2. In evaluating whether a Person is prohibited from holding a license pursuant to subsections 44-10-307(1)(b) or (c), C.R.S., based on a determination that the person's criminal history indicates he or she is not of Good Moral Character, the Division may consider the following history:

a. Any felony conviction(s), except as set forth in Rule 2-265(L)(1)(e) and 2-265(L)(1)(f);

b. Any conviction(s) of crimes involving moral turpitude;

c. Pertinent circumstances connected with the conviction(s); and

d. Conduct underlying arrest(s) or charge(s) or a criminal offense for which the criminal case is not actively pending.

3. When considering criminal history in subparagraph (L)(2) above, the Division will consider:

a. Whether there is a direct relationship between the conviction(s) and the duties and responsibilities of holding a state license issued pursuant to the Marijuana Code;

b. Any information provided to the Division regarding the person's rehabilitation, which may include but is not limited to the following non-exhaustive considerations:

i. Character references;

ii. Educational, vocational, and community achievements, especially those achievements occurring during the time between the person's most recent criminal conviction and the application for a state license;

iii. Successful participation in an alcohol and drug treatment program;

iv. That the person truthfully and fully reported the criminal conduct to the Division;

v. The person's employment history after conviction or release, including but not limited to whether the person was vetted and approved to hold a state or out-of-state license for the purposes of employment in a regulated industry;

vi. The person's successful compliance with any conditions of parole or probation imposed after conviction or release; or

vii. Any other facts or circumstances tending to show the Applicant has been rehabilitated and is ready to accept the responsibilities of a law-abiding and productive member of society.

Basis and Purpose – 2-270

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l)-(m), 44-10-203(2)(w), 44-10-305, 44-10-306, 44-10-307, 44-10-313(8), 24-4-104, and 24-4-105, C.R.S. The purpose of this rule is to clarify the procedures and factors governing the denial process and voluntary withdrawal process for all licenses issued by the State Licensing Authority. This Rule 2-270 is similar to the previous Rules M and R 251, 1 CCR 212-1 and 1 CCR 212-2.

2-270 – Application Denial, Voluntary Withdrawal, and Effect of License Surrender or Revocation on Related Applications

A. Applicant Bears the Burden of Proving It Meets Licensure Requirements. A License issued to a Person or a Regulated Marijuana Business is a revocable privilege. At all times during the application process, an Applicant must be capable of establishing it is qualified to hold a License.

B. Applicants Must Provide Information to the Division in a Full, Faithful, Truthful, and Fair Manner. An application may be denied where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application or in connection with the Applicant's suitability investigation. Providing misstatements, misrepresentations, omissions, or untruths to the Division may be the basis for administrative action, or the basis of criminal charges against the Applicant.

C. Grounds for Denial.

1. The State Licensing Authority will deny an application for Good Cause.

2. The State Licensing Authority will deny an application from an Applicant that is statutorily disqualified from holding a license.

3. The State Licensing Authority will deny an application where the Applicant failed to provide all required information or documents, failed to obtain all required findings of suitability prior to submitting the application, provided inaccurate, incomplete, or untruthful information or documents, or failed to cooperate with the Division.

D. Voluntary Withdrawal of Application.

1. The Division and Applicant may mutually agree to allow the voluntary withdrawal of an application in lieu of a denial proceeding.

2. Applicants must first submit a form to the Division requesting the voluntary withdrawal of the application. Applicants will submit the form with the understanding that they were not obligated to request the voluntary withdrawal and that any right to a hearing in the matter is waived once the voluntary withdrawal is approved.

3. The Division will consider the request along with any circumstances at issue with the application in making a decision to accept the voluntary withdrawal. The Division may at its discretion grant the request with or without prejudice or deny the request.

4. The Division will notify the Applicant of its acceptance of the voluntary withdrawal and the terms thereof.

5. If the Applicant agrees to a voluntary withdrawal granted with prejudice, then the Applicant is not eligible to apply again for licensing or approval until after expiration of one year from the date of such voluntary withdrawal.

E. A Denied Applicant May Appeal a Denial. A Denied Applicant may appeal a denial pursuant to the Administrative Procedure Act.

F. Effect of License Surrender or Revocation on Related Applications. If a License is voluntarily surrendered or revoked, and there are related applications that are seeking some change to that License (including, but not limited to, renewal, change of Controlling Beneficial Owner, modification of Licensed Premises, or change of location) pending Final Agency Order, the related applications become moot and those moot applications will be closed by the Division without further action or notification to the Applicant.

Basis and Purpose – 2-275

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(q), 44-10-203(2)(t), 11-10-310, 44-10-401(3)(a)-(d), C.R.S. The purpose of this rule is to establish procedures and requirements for any Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person acting in accordance with sections 44-10-401(3)(a)-(d), C.R.S., and authorized by court order to take possession of, operate, manage, or control a Regulated Marijuana Business. This Rule 2-275 was previously Rules M and R 253, 1 CCR 212-1 and 1 CCR 212-2.

2-275 – Temporary Appointee Registrations for Court Appointees

A. Notice and Application Requirements for All Court Appointees.

1. Notice to the State and Local Licensing Authorities. Within seven days of accepting an appointment as a Court Appointee pursuant to sections 44-10-401(3), C.R.S., such Court Appointee must file a notice to the State Licensing Authority and the applicable Local Licensing Authority on a form required by the State Licensing Authority which must include at least:

a. A copy of the order appointing the Court Appointee;

b. A statement affirming the Court Appointee complied with the certification required by section 44-10-401(3)(a), C.R.S.;

c. If the Court Appointee is an entity, a list of all natural persons responsible for taking possession of, operating, managing, or controlling the Regulated Marijuana Business; and

d. A complete list of all Regulated Marijuana Businesses for which the Court Appointee was appointed and the respective dates during which the Court Appointee is currently serving, or has previously served, as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person.

2. Application for Finding of Suitability. Within 14 days of accepting an appointment as a Court Appointee pursuant to section 44-10-401(3), C.R.S., each Court Appointee must file an application for a finding of suitability with the State Licensing Authority on forms required by the State Licensing Authority. Each entity and natural person for whom a notice was filed pursuant to Rule 2-275(A) must file an application for a finding of suitability. The Division may in its discretion extend the 14-day deadline to file an application for a finding of suitability upon a showing of good cause. The Division may also in its discretion rely upon a recent licensing background investigation for Court Appointees that currently hold a license or Temporary Appointee Registration issued by the State Licensing Authority and may waive all or part of the application fee accordingly.

3. Effective Date. The Temporary Appointee Registration will be issued following the State Licensing Authority's receipt of the notice required by Rule 2-275(A)(1) and is effective as of the date of the court appointment.

B. Temporary Appointee Registration.

1. Entities. If the Court Appointee is an entity, the entity and all natural persons responsible for taking possession of, operating, managing, or controlling the Regulated Marijuana Business must receive a Temporary Appointee Registration. Every Court Appointee that is an entity must have at least one natural person with a Temporary Appointee Registration.

2. Temporary Appointee Registrations. Every Temporary Appointee Registration issued to a Person will be treated as an Owner License except where inconsistent with section 44-10-401(3), C.R.S., or this Rule.

3. Other employees. Any other person working under the direction of a Court Appointee who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, researches, or delivers Regulated Marijuana as permitted by privileges granted under a Regulated Marijuana Business license must have a valid Employee License.

4. Licensed Premises. A Court Appointee cannot establish an independent Licensed Premises but is authorized to exercise the privileges of the Temporary Appointee Registration in the Licensed Premises of the Regulated Marijuana Business for which it is appointed.

5. Medical Marijuana Business Operators or Retail Marijuana Business Operators. A Court Appointee may retain a Medical Marijuana Business Operator or a Retail Marijuana Business Operator. If the Medical Marijuana Business Operator or Retail Marijuana Business Operator is the Court Appointee, see subparagraph E of this Rule.

6. Marijuana Code and Rules Applicable. Court Appointees are subject to the requirements of the Marijuana Code and the rules promulgated thereto. Except where inconsistent with section 44-10-401(3), C.R.S., or this Rule, the State Licensing Authority may take any action with respect to a Temporary Appointee Registration that it could take with respect to any license issued under the Marijuana Code. In any action involving a Temporary Appointee Registration, these rules will be read to include the terms "registered", "registration", "registrant", or any other similar terms in lieu of "licensed", "licensee", and

any other similar terms as the context requires when applied to a Temporary Appointee Registration.

C. Administrative Actions.

1. Suspension, Revocation, Fine, or Other Administrative Action Regarding a Regulated Marijuana Business. In addition to any other basis for suspension, revocation, fine, or other administrative action, a Regulated Marijuana Business's license may, pursuant to subsections 44-10-202(1)(b), 44-10-401(3)(b), and 44-10-901(1), C.R.S., be suspended, revoked, fined, or subject to other administrative action based upon its Court Appointee's violations of the Marijuana Code, the rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee's failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such administrative action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect.

2. Suspension, Revocation, Fine, or Other Administrative Action Regarding a Temporary Appointee Registration. In addition to any other basis for suspension, revocation, fine, or other administrative action, a Temporary Appointee Registration may, pursuant to subsections 44-10-202(1)(b), 44-10-401(3)(b), and 44-10-901(1), C.R.S., be suspended, revoked, or subject to other administrative action based upon the Court Appointee's violations of the Marijuana Code or the Rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee's failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such administrative action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect. If a Person holding a Temporary Appointee Registration also holds any other Owner License or Employee License, the Owner License, the Employee License, and the Temporary Appointee Registration may be suspended, revoked, fined, or subject to other administrative action for any violations of the Marijuana Code or the rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration, Owner License, and/or Employee License issued by the State Licensing Authority, or any order of the State Licensing Authority.

3. Suitability. If the State Licensing Authority denies an application for a finding of suitability because the Court Appointee failed to timely apply for a finding of suitability, failed to timely provide all information requested by the Division in connection with an application for a finding of suitability, or was found unsuitable, the State Licensing Authority may also pursue administrative action as set forth in this Rule.

4. Court Appointee's Responsibility to Notify Appointing Court. The Court Appointee must notify the appointing court of any action taken against the Temporary Appointee Registration by the State Licensing Authority pursuant to sections 44-10-901 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Court Appointee must forward a copy of such notification to the Division at the same time the notification is made to the appointing court.

D. Expiration and Renewal.

1. Conclusion of Court Appointment. A Court Appointee's Temporary Appointee Registration expires upon the conclusion of a Court Appointee's court appointment. Each Court Appointee and each Regulated Marijuana Business that has a Court Appointee must notify the State Licensing Authority within two business days of the date on which a Court Appointee's court appointment ends, whether due to termination of the appointment by the court, substitution of another Court Appointee, closure of the court case, or otherwise. For a Court Appointee that is appointed in connection with multiple court cases, the notice must be filed with the State Licensing Authority with respect to each such case.

2. Annual Renewal. If it has not yet expired pursuant to Rule 2-270(D)(1), each Temporary Appointee Registration is valid for one year, after which it must be subject to annual renewal in accordance with the Marijuana Code and the rules promulgated pursuant to the Marijuana Code. If a Court Appointee is appointed in connection with multiple court cases, the Temporary Appointee Registration is subject to annual renewal unless all such appointments have ended, whether due to termination of the appointments by the courts, substitution of other Court Appointees, closure of the court cases, or otherwise.

3. Other Termination. A Temporary Appointee Registration may be valid for less than the applicable term if surrendered, revoked, suspended, or subject to similar action.

E. Medical Marijuana Business Operators and/or Retail Marijuana Business Operators as Court Appointees. By virtue of its privileges of licensure, a Medical Marijuana Business Operator, a Retail Marijuana Business Operator, and their respective Owner Licensees may serve as Court Appointees without a Temporary Appointee Registration subject to the following terms:

1. Notice to the State Licensing Authority of Appointment. The Medical Marijuana Business Operator or the Retail Marijuana Business Operator, and its Owner Licensee(s) are responsible for notifying the State Licensing Authority within seven days of any court appointment to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Regulated Marijuana Business. Such notice must be accompanied by a copy of the order making the appointment and must identify each Regulated Marijuana Business regarding which the Medical Marijuana Business Operator and/or Retail Marijuana Business Operator is appointed.

2. Notice to the Appointing Court of State Licensing Authority Action. The Medical Marijuana Business Operator or the Retail Marijuana Business, and its Owner Licensee(s) are responsible for notifying the appointing court of any action taken against the Medical Marijuana Business Operator license, the Retail Marijuana Business Operator license and/or the Owner License by the State Licensing Authority pursuant to sections 44-10-901 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Medical Marijuana Business Operator, the Retail Marijuana Business Operator and its Owner Licensee(s) must forward a copy of such notification to the Division at the same time the notification is made to the appointing court.

Basis and Purpose – 2-280

The statutory basis for this rule includes but is not limited to sections 44-10-203(2)(c), 44-10-203(2)(l), 44-10-203(2)(t), 44-10-203(2)(ee)(D), 44-10-203(7), 44-10-307, 44-10-309(4)-(5), 44-10-310(5) and (11), 44-

10-313(8)(a), and 44-10-901, C.R.S. The purpose of this rule is to clarify the conditions and procedures for divestiture of any Person prohibited from holding a license under section 44-10-307, C.R.S., or who is found unsuitable by the State Licensing Authority. This rule also requires that every Regulated Marijuana Business have at least one Controlling Beneficial Owner and provides what happens in the event of suspension of a Regulated Marijuana Business's Controlling Beneficial Owner(s). Finally, this rule provides that Licensees cannot have unlicensed persons take actions on their behalf or for their benefit that the Licensees themselves are prohibited from taking under these rules or the Marijuana Code.

2-280 – Controlling Beneficial Owners that are Persons Prohibited, Unsuitable, Revoked, or Suspended; At Least One Controlling Beneficial Owner Holding a Valid Owner License Required; and Prohibited Third-Party Acts

A. Controlling Beneficial Owners That Are Persons Prohibited, Unsuitable, or Revoked.

1. Less than 100% of all Controlling Beneficial Owners – Divestiture. If less than 100% of a Regulated Marijuana Business's Controlling Beneficial Owners are or become a Person prohibited from holding a license by these Rules or the Marijuana Code, have his or her Owner License revoked by a Final Agency Order, or are found unsuitable, the Regulated Marijuana Business must divest all of the Beneficial Ownership of that Controlling Beneficial Owner.

a. Unless extended for good cause, within 90 days of a Controlling Beneficial Owner becoming a Person prohibited from holding a license, having his or her Owner License revoked, or being found unsuitable, the Regulated Marijuana Business must either:

i. Submit a change of owner application, where required, and any document(s) necessary to transfer all of that Controlling Beneficial Owner's Interests to one or more Persons that are not prohibited from holding a license or unsuitable. Any required change of owner application is subject to approval by the Division; or

ii. Where a change of owner application is not required, transfer all of that Controlling Beneficial Owner's Interests to one or more Persons that are not a Person prohibited from holding a license or unsuitable.

b. In determining whether good cause for an extension exists, the Division will consider whether there is any Owner Interest buy-back provision with the Controlling Beneficial Owner. If mediation, arbitration, or a legal proceeding has been initiated regarding the required divestiture, the 90-day deadline is extended until 90 days following execution of a settlement agreement, arbitration order, or final judgment concluding the mediation, arbitration, or legal proceeding.

c. A Regulated Marijuana Business that is a Publicly Traded Corporation must have a divestiture plan with its Controlling Beneficial Owners which must be disclosed to the Division pursuant to Rule 2-220(A).

d. A Regulated Marijuana Business that fails to divest a Controlling Beneficial Owner as required by this Rule may be subject to denial, fine, suspension, or revocation of its license(s). The State Licensing Authority may consider aggravating and mitigating factors surrounding measures taken to divest the unsuitable or Person prohibited from holding a license when determining the imposition of a penalty. However, a Regulated Marijuana Business that is unable to divest a Controlling Beneficial Owner that is a Person prohibited from holding a license or found unsuitable is prohibited from being issued or holding a license.

2. All Controlling Beneficial Owners are Unsuitable, Revoked, or Persons Prohibited From Holding a License. A Regulated Marijuana Business's License may be revoked if 100% of its Controlling Beneficial Owners are found unsuitable, have his or her Owner's License revoked, or are Persons prohibited from holding a license by these Rules or the Marijuana Code.

B. Suspension of Controlling Beneficial Owners.

1. Suspension of Less than 100% of the Controlling Beneficial Owner(s) of a Regulated Marijuana Business. In the event of the suspension of the Owner License of a Controlling Beneficial Owner, either (i) the Regulated Marijuana Business must comply with all requirements of rule 8-210 – Disciplinary Process: Summary Suspensions, or (ii) the non-suspended Owner Licensee(s) must control the Regulated Marijuana Business without participation from the suspended Controlling Beneficial Owner(s).

2. Suspension of 100% of the Controlling Beneficial Owners of a Regulated Marijuana Business. A Regulated Marijuana Business cannot operate or Transfer Regulated Marijuana if all Controlling Beneficial Owners are suspended.

C. At Least One Controlling Beneficial Owner Holding a Valid Owner License Required. No Regulated Marijuana Business may operate or be licensed unless it has at least one Controlling Beneficial Owner who holds a valid Owner License.

D. Loss Of Owner License As A Controlling Beneficial Owner Of Multiple Businesses. If an Owner License is suspended, revoked, or found unsuitable as to one Regulated Marijuana Business, that Owner License is automatically suspended, revoked, or found unsuitable as to any other Regulated Marijuana Business in which that Person is a Controlling Beneficial Owner.

E. Prohibited Third-Party Acts. No Licensee may employ, contract with, hire, or otherwise retain any Person, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit if the Licensee is prohibited by law or these rules from engaging in such conduct itself.

1. A Licensee may be held responsible for all actions and omissions of any Person the Licensee employs, contracts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

2. A Licensee may be subject to license denial or administrative action, including but not limited to fine, suspension, or revocation of its license(s), based on the act and/or omissions of any Person the Licensee employs, contracts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

Basis and Purpose – 2-285

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), 44-10-401(2)(b)(I), 44-10-401(2)(b)(VII), 44-10-401(2)(b)(VIII), 44-10-607, 44-10-608, 44-10-611 C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees participating in the accelerator program.

2-285 – Accelerator Endorsement Application, Qualification, and Eligibility

A. Beginning January 1, 2021, Retail Marijuana Store Licensees, Retail Marijuana Cultivation Facility Licensees, and Retail Marijuana Products Manufacturers Licensees may apply for an

endorsement to participate in the accelerator program. The application shall be made on Division forms and in accordance with the 2-200 Series Rules.

B. Qualifications and Eligibility. The State Licensing Authority may consider the following facts and circumstances for purposes of determining a Licensees' qualifications and eligibility to be an Accelerator-Endorsed Licensee.

1. The Applicant has not, in the previous two years, been subject to a license revocation or active suspension issued by the State Licensing Authority, any Local Licensing Authority or Local Jurisdiction, or any other state in which it operated.

2. Information demonstrating the Applicant operated its license for at least two years prior to the date of application; or if the Applicant is unable to demonstrate operations for a period of at least two years, it must satisfy at least one of the following:

a. The Applicant possesses a valid commercial marijuana license issued in another state and has operated such license for the preceding two years;

b. For the preceding two years the Applicant has participated in an accelerator, incubator, or social equity program that may, but is not required to be, associated with the commercial marijuana industry;

c. The Applicant has at least two years of regulated cannabis industry experience at a managerial or executive level; or

d. The Applicant has at least two years of business experience in a highly regulated industry other than the marijuana industry.

C. Application Requirements. In addition to all other application requirements outlined in the 2-200 Series Rules, an application to become an Accelerator-Endorsed Licensee must include the Applicant's equity assistance proposal, containing the information required by the 3-1100 Series Rules.

D. The Division will maintain a list of Accelerator-Endorsed Licensees on its website. By submitting an application to become an Accelerator-Endorsed Licensee, the Applicant authorizes the State Licensing Authority to publish the Applicant's name on the Division's website.

Part 3 – Regulated Marijuana Business Operations

3-100 Series – General Privileges and Limitations

Basis and Purpose – 3-105

The statutory authority for this rule includes but is not limited to sections 44-10-102(2), 44-10-102(3), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-401(2), 44-10-701(2)(a), 44-10-701(2)(c), and 44-10-701(3)(e), C.R.S. The purpose of this rule is to establish that it is unlawful for any Regulated Marijuana Business Licensee to exercise any privileges other than those granted to it by the State Licensing Authority.

3-105 – Regulated Marijuana Businesses: Privileges Granted

A Regulated Marijuana Business shall only exercise those privileges granted to it by the State Licensing Authority.

Basis and Purpose – 3-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-401(2), 44-10-701(1)(a), 44-10-701(3)(d), and 44-10-701(3)(f), C.R.S. The purpose of this rule is to clarify that, except for in a Licensed Hospitality Business, it is unlawful for a Regulated Marijuana Business to allow consumption on the Licensed Premises.

3-110 – Regulated Marijuana Businesses: General Restrictions

A. Consumption Prohibited.

1. Applicability. This subparagraph (A) applies to all Regulated Marijuana Businesses, except Licensed Hospitality Businesses.

2. Licensees shall not permit the consumption of marijuana or marijuana product on the Licensed Premises or in transport vehicles, including any Sampling Units Transferred to a Sampling Manager.

B. Alcohol Beverage License Prohibited. A Person may not operate a license issued pursuant to the Marijuana Code and these rules at the same Licensed Premises as a license or permit issued pursuant to article 3, 4 or 5 of Title 44.

C. Safe Harbor Hemp Products. A Regulated Marijuana Business may not possess or Transfer Safe Harbor Hemp Products.

Basis and Purpose – 3-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2), and 44-10-701(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited or prohibited in some way and to make clear that a Regulated Marijuana Business shall not offer or receive complimentary Regulated Marijuana from a licensed transporter.

3-115 – Transporter Transfer Restriction

A Licensee shall not sell or give away Regulated Marijuana to a Medical Marijuana Transporter or Retail Marijuana Transporter, and shall not buy, or receive, complimentary Regulated Marijuana from a Medical Marijuana Transporter or Retail Marijuana Transporter.

3-200 Series – Licensed Premises

Basis and Purpose – 3-205

The statutory authority for this rule includes but is not limited to sections 44-10-103(14), 44-10-103(26), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(p), and 44-10-203(2)(t), C.R.S. The purpose of this rule is to establish Limited Access Areas for Licensed Premises under the control of the Licensee to only individuals licensed by the State Licensing Authority. In addition, this rule clarifies that businesses and individuals cannot use the visitor system as a means to employ an individual who does not possess a valid and current Employee License. This Rule was previously Rules M and R 301, 1 CCR 212-1 and 1 CCR 212-2.

3-205 – Limited Access Areas

A. Proper Display of Identification Badge. All Persons in a Limited Access Area as provided for in section 44-10-103(26) C.R.S., shall be required to hold and properly display a current Identification Badge issued by the Division at all times. Proper display of the Identification Badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the

photo of the Licensee visible. The Licensee shall not alter, obscure, damage, or deface the badge in any manner.

B. Visitors in Limited Access Areas.

1. Prior to entering a Limited Access Area, all visitors, including outside vendors, contractors or others, must obtain a visitor identification badge from management personnel of the Licensee that shall remain visible while in the Limited Access Area.

2. Visitors shall be escorted by the Regulated Marijuana Business's licensed personnel at all times. No more than five visitors may be escorted by a single employee. Except that trade craftspeople, including but not limited to ancillary business operators, not normally engaged in the business of cultivating, processing, or selling Regulated Marijuana need not be accompanied on a full-time basis, but only reasonably monitored.

3. A Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the Division any discovered plan or other action of any Person to (1) commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the subject Regulated Marijuana Business; or (2) compromise the integrity of the Inventory Tracking System. A report shall be made as soon as possible after the discovery of the action, but not later than 14 days. Nothing in this paragraph (B) alters or eliminates any obligation a Regulated Marijuana Business or Licensee may have to report criminal activity to a local law enforcement agency.

4. The Licensee shall maintain a log of all visitor activity, for any purpose, within the Limited Access Area and shall make such logs available for inspection by the Division and relevant Local Licensing Authority or Local Jurisdiction.

5. All visitors admitted into a Limited Access Area must provide acceptable proof of age and must be at least 21 years of age. *See* Rule 3-405 – Acceptable Forms of Identification.

6. The Licensee shall check the identification for all visitors to verify that the name on the identification matches the name in the visitor log. *See* Rule 3-405 – Acceptable Forms of Identification.

7. A Licensee may not receive consideration or compensation for permitting a visitor to enter a Limited Access Area.

8. Use of a visitor badge to circumvent the Employee License requirements of Rule 2-265 is prohibited and may constitute a license violation affecting public safety.

C. Required Signage. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Do Not Enter - Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors." A Licensee may comply with this paragraph (C) when that sign is conspicuously placed immediately within an exterior entrance that is locked against public entry and only accessible to limited, licensed personnel and escorted visitors.

D. Diagram for Licensed Premises. All Limited Access Areas shall be clearly identified to the Division and relevant Local Licensing Authority or Local Jurisdiction and described in a diagram of the Licensed Premises reflecting walls, partitions, counters and all areas of ingress and egress. The diagram shall also reflect all Propagation, cultivation, manufacturing, testing, consumption, and Restricted Access Areas. *See* Rule 3-905 – Business Records Required.

E. Modification of Limited Access Area. A Licensee's proposed modification of designated Limited Access Areas must be approved by the Division, the Local Licensing Authority, and, if required, the relevant Local Jurisdiction prior to any modifications being made. *See* Rule 2-260 – Changing, Altering, or Modifying Licensed Premises.

F. Law Enforcement Personnel Authorized. Notwithstanding the requirements of subsection A of this Rule, nothing shall prohibit investigators and employees of the Division, authorities from relevant Local Jurisdiction or state or local law enforcement, for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, from entering a Limited Access Area upon presentation of official credentials identifying them as such.

G. When the Limited Access Area within a Licensed Premises of a Regulated Marijuana Business can only be accessed from outside the Licensed Premises, the movement of Regulated Marijuana and Regulated Marijuana Product between and within the Licensed Premises must comply with the following requirements:

1. Any Regulated Marijuana or Regulated Marijuana Product must be moved by a person holding a valid Owner License or Employee License and who must be an employee of the Regulated Marijuana Business;

2. Any Regulated Marijuana or Regulated Marijuana Product must be in a sealed, opaque Container;

3. Any movement of Regulated Marijuana or Regulated Marijuana Product must remain on video surveillance;

4. The Owner Licensee or Employee Licensee moving the Regulated Marijuana or Regulated Marijuana Product must not enter the property of any other business, vehicle, residence, or building that is not controlled by the Licensee; and

5. Any movement must not be by a self-propelled vehicle that is designed primarily for travel on the public highways, that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle.

Basis and Purpose – 3-210

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-311(1)(b), and 44-10-311(2), C.R.S. The purpose of this rule is to establish and clarify the means by which the Licensee has lawful possession of the Licensed Premises. This Rule 3-210 was previously Rules M and R 302, 1 CCR 212-1 and 1 CCR 212-2.

3-210 – Possession of Licensed Premises

A. Evidence of Lawful Possession. Persons licensed pursuant to sections 44-10-501, 44-10-502, 44-10-503, 44-10-504, 44-10-507, 44-10-601, 44-10-602, 44-10-603, 44-10-604, 44-10-607, 44-10-608, 44-10-609, 44-10-610 C.R.S., or those applying for such licenses, must demonstrate proof of lawful possession of the premises to be licensed or Licensed Premises. Evidence of lawful possession consists of properly executed deeds of trust, leases, or other written documents acceptable to state and local licensing authorities.

B. Relocation Prohibited. The Licensed Premises shall only be those geographical areas that are specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location application and obtaining approval from the Division and the relevant Local Jurisdiction. Licensees shall not add additional contiguous units or areas, thereby

altering the initially-approved premises, without filing an application and receiving approval to modify the Licensed Premises on current forms prepared by the Division, including any applicable processing fee. *See* Rule 2-260 - Changing, Altering, or Modifying Licensed Premises

C. Subletting Not Authorized. Licensees are not authorized to sublet any portion of Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Division and the relevant Local Licensing Authority or Local Jurisdiction.

Basis and Purpose – 3-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(14), 44-10-401, 44-10-501, 44-10-502, 44-10-503, 44-10-504, 44-10-601, 44-10-602, 44-10-603, 44-10-604, C.R.S. The purpose of this rule is to establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Retail Marijuana Business, and to ensure the proper separation of Regulated Marijuana Business operation operations. This Rule 3-215 was previously Rules M and R 304.1, 1 CCR 212-1 and 1 CCR 212-2.

3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation

A. Shared Licensed Premises for Medical Marijuana Stores and Retail Marijuana Stores.

1. Medical Marijuana Store that authorizes only patients that are over the age of 21. A Medical Marijuana Store that authorizes only Medical Marijuana patients who are over the age of 21 years to be on the Licensed Premises may also hold a Retail Marijuana Store license and operate at the same location under the following circumstances:

a. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

b. The Medical Marijuana Store and Retail Marijuana Store are commonly owned;

c. The Medical Marijuana Store and Retail Marijuana Store shall maintain physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory;

d. The Medical Marijuana Store and Retail Marijuana Store shall maintain separate displays between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory, but the displays may be on the same sale floor;

e. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Store and Retail Marijuana Store shall enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Store from the inventories and business transactions of the Retail Marijuana Store; and

f. The Medical Marijuana Store shall post and maintain signage that clearly conveys that persons under the age of 21 years may not enter.

2. Medical Marijuana Store that authorizes patients under the age of 21. A Medical Marijuana Store that authorizes Medical Marijuana patients under the age of 21 years to be on the Licensed Premises may operate in the same location with a Retail Marijuana Store under the following conditions:

    a. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

    b. The Medical Marijuana Store and Retail Marijuana Store are commonly owned;

    c. The Medical Marijuana Store and Retail Marijuana Store maintain physical separation, including separate entrances and exits, between their respective Restricted Access Areas;

    d. No point of sale operations occur at any time outside the physically separated Restricted Access Areas;

    e. All Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Product in a Restricted Access Area must be physically separated from all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in a Restricted Access Area, and such physical separation must include separate entrances and exits;

    f. Any display areas shall be located in the physically separated Restricted Access Areas;

    g. In addition to the physically separated sales and display areas, the Medical Marijuana Store and Retail Marijuana Store shall maintain physical or virtual separation for storage of Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory from storage of Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

    h. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Store and Retail Marijuana Store shall enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Store from the inventories and business transactions of the Retail Marijuana Store.

B. Shared Licensed Premises For Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility. A Medical Marijuana Cultivation Facility and a Retail Marijuana Cultivation Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility are commonly owned;

3. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility shall maintain either physical or virtual separation between (i) Medical Marijuana and Medical Marijuana Concentrate and (ii) Retail Marijuana and Retail Marijuana Concentrate; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility must enable the Division and relevant Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Cultivation Facility from the Retail Marijuana Cultivation Facility.

C. Shared Licensed Premises For Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer. A Medical Marijuana Products Manufacturer and a Retail Marijuana Products Manufacturer may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

2. The Medical Marijuana Products Manufacturer and the Retail Marijuana Products Manufacturer are commonly owned;

3. The Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory. Nothing in this Rule prohibits a Retail Marijuana Products Manufacturer and Medical Marijuana Products Manufacturer from sharing raw Ingredients in bulk, for example flour or sugar, except Retail Marijuana and Medical Marijuana may not be shared under any circumstances; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer must enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Products Manufacturer from the Retail Marijuana Products Manufacturer.

D. Shared Licensed Premises For Medical Marijuana Store, Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Store, Retail Marijuana Cultivation Facility, and Retail Marijuana Products Manufacturer. A Medical Marijuana Store, Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Store, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer may share the common areas of a Licensed Premises where the cultivation, manufacture, packaging, storing, or Transfers to patients and consumers of Regulated Marijuana does not occur. For example, the shared common areas may include hallways, break rooms, bathrooms, etc. Licensees must maintain physical separation of all Regulated Marijuana inventory. Nothing in this paragraph D prohibits Licensees sharing premises in accordance with paragraphs (B) and (C) of this Rule.

E. Shared Licensed Premises For Medical Marijuana Testing Facility and Retail Marijuana Testing Facility. A Medical Marijuana Testing Facility and a Retail Marijuana Testing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit dual operation at the same location;

2. The Regulated Marijuana Testing Facilities are identically owned;

3. The Regulated Marijuana Testing Facilities shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical

Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

4. Record-keeping, inventory tracking, packaging and labeling for the Regulated Marijuana Testing Facilities must enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Testing Facility from the Retail Marijuana Testing Facility.

F. Shared Licensed Premises Medical Marijuana Transporter and Retail Marijuana Transporter. A Medical Marijuana Transporter and a Retail Marijuana Transporter may share a single Licensed Premises and operate dual transporting, logistics, and temporary storage business operation at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit dual operation at the same location;

2. The Medical Marijuana Transporter and Retail Marijuana Transporter are identically owned;

3. The Medical Marijuana Transporter and Retail Marijuana Transporter shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Transporter and Retail Marijuana Transporter must enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Transporter from the Retail Marijuana Transporter.

G. Shared Licensed Premises Marijuana Research and Development Facility. A Marijuana Research and Development Facility that has obtained an R&D Co-Location Permit pursuant to Rule 5-705(C) may share a single Licensed Premises and operate at the same location as another Regulated Marijuana Business to the extent permitted by the R&D Co-Location Permit and otherwise in compliance with all applicable rules. *See* 5-700 Series Rules.

H. Violation Affecting Public Safety. Violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose – 3-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c),44-10-203(1)(k), 44-10-203(2)(e), and 29-2-114(8)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV). The purpose of this rule is to ensure adequate control of the Licensed Premises and Regulated Marijuana contained therein. This rule establishes the minimum guidelines for security requirements for alarm systems and commercial locking mechanisms for maintaining adequate security. This rule also establishes fencing and lighting requirements for outdoor cultivations. This Rule 3-220 was previously Rules M and R 305, 1 CCR 212-1 and 1 CCR 212-2.

3-220 – Security Alarm Systems and Lock Standards

A. Security Alarm Systems – Minimum Requirements. The following Security Alarm Systems and lock standards apply to all Regulated Marijuana Businesses, unless stated otherwise by these rules.

1. Each Licensed Premises shall have a Security Alarm System, installed by an Alarm Installation Company, on all perimeter entry points and perimeter windows.

2. Each Licensee must ensure that all of its Licensed Premises are continuously monitored. Licensees may engage the services of a Monitoring Company to fulfill this requirement.

3. A Licensee shall maintain up-to-date and current records and existing contracts on the Licensed Premises that describe the location and operation of each Security Alarm System, a schematic of security zones, the name of the Alarm Installation Company, and the name of any Monitoring Company. *See* Rule 3-905 – Business Records Required.

4. Upon request, Licensees shall make available to agents of the Division or relevant Local Licensing Authority or Local Jurisdiction or state or local law enforcement agency, for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, all information related to Security Alarm Systems, Monitoring, and alarm activity.

5. Any outdoor or Greenhouse Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility is a Limited Access Area and must meet all of the requirements for Security Alarm Systems described in this Rule. An outdoor or Greenhouse Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility must provide sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals. It shall be the responsibility of the Licensee to maintain physical security in a manner similar to a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility located in an indoor Limited Access Area so it can be fully secured and alarmed. The fencing requirements shall include, at a minimum, perimeter fencing designed to prevent the general public from entering the Limited Access Areas and shall meet at least the following minimum requirements:

   a. The entire Limited Access Area shall be surrounded by a fence constructed of nine gauge or lower metal chain link fence or another similarly secure material. The fence shall measure at least eight feet from the ground to the top, or in the alternative, the fence may measure six feet from the ground to the top with a 1 foot barbed wire arm with at least three strands along the entire fence. All support posts shall be steel and securely anchored.

   b. All gates of ingress or egress shall measure at least eight feet from the ground to the top of the entry gate, or in the alternative, the gate may measure six feet from the ground to the top with a 1 foot barbed wire arm with at least three strands, and shall be constructed of nine gauge or lower metal chain link fence or a similarly secure material.

   c. Repealed.

   d. All areas of ingress and egress of the fence shall either:

      i. Be illuminated including a 20 foot radius from the point of ingress or egress. Lights may be, but are not required to be, motion sensing; or

      ii. Have cameras with night vision capacity capable of recording a 20 foot radius from the point of ingress or egress.

e. A Licensee or Applicant for initial licensure may, in writing, request that the Division waive one or more of the security requirements described in these subparagraphs (a) through (d) of this Rule, by submitting on a form prescribed by the Division a security waiver request for Division approval. The Division may, in its discretion and on a case-by-case basis, approve the security waiver if it finds that the alternative safeguard proposed by the Licensee or Applicant for initial licensure meets the goals of the above security requirements or that the security requirements are in conflict with a local ordinance of general applicability. Approved security waivers expire at the same time as the underlying License and may be renewed at the time the License renewal application is submitted. The Licensee's or Applicant for initial licensure's request for a waiver shall include:

i. The specific rules and subsections of a rule that are requested to be waived;

ii. The reason for the waiver;

iii. A description of an alternative safeguard the Licensee will implement in lieu of the requirement that is the subject of the waiver; and

iv. An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to minors.

B. Lock Standards – Minimum Requirement.

1. At all points of ingress and egress, the Licensee shall ensure the use of commercial-grade, non-residential door locks.

2. Any outdoor or Greenhouse Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility must meet all of the requirements for the lock standards described in this Rule.

Basis and Purpose – 3-225

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(h), 44-10-203(1)(k), 44-10-203(2)(e), 44-10-313(14), and 44-10-1001, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure adequate control of the Licensed Premises and Regulated Marijuana contained therein. This rule also establishes the minimum guidelines for security requirements for video surveillance systems for maintaining adequate security. This Rule 3-225 was previously Rules M and R 306, 1 CCR 212-1 and 1 CCR 212-2.

3-225 – Video Surveillance

A. Minimum Requirements. The following video surveillance requirements shall apply to all Regulated Marijuana Businesses, unless stated otherwise in these rules.

1. Prior to exercising the privileges of a Regulated Marijuana Business, an Applicant must install a fully operational video surveillance and camera recording system. The recording system must record in digital format and meet the requirements outlined in this Rule.

2. All video surveillance records and recordings must be stored in a secure area that is only accessible to a Licensee's management staff.

3. Video surveillance records and recordings must be made available upon request to the Division, the relevant Local Licensing Authority or Local Jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose.

4. Video surveillance records and recordings of point-of-sale areas shall be held in confidence by all employees and representatives of the Division, except that the Division may provide such records and recordings to the Local Licensing Authority or Local Jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Marijuana Code, or for any other state or local law enforcement purpose.

B. Video Surveillance Equipment.

1. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the recording requirements described in this Rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.

2. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.

3. Licensees are responsible for ensuring that all surveillance equipment is properly functioning and maintained, so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.

4. All video surveillance equipment shall have sufficient battery backup to support a minimum of four hours of recording in the event of a power outage. Licensee must notify the Division of any loss of video surveillance capabilities that extend beyond four hours.

C. Placement of Cameras and Required Camera Coverage.

1. Camera coverage is required for all areas identified as Restricted Access Areas or Limited Access Areas, point-of-sale areas, security rooms, all points of ingress and egress to Limited Access Areas, all areas where Regulated Marijuana is displayed for sale, and all points of ingress and egress to the exterior of the Licensed Premises.

2. Camera placement shall be capable of identifying activity occurring within 20 feet of all points of ingress and egress and shall allow for the clear and certain identification of any individual and activities on the Licensed Premises.

3. At each point-of-sale location, camera coverage must enable recording of the facial features of patients, caregivers or consumer(s), and employee(s) with sufficient clarity to determine identity.

4. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points.

5. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. If the Licensed Premises has a Regulated Marijuana cultivation area, a rotating schedule of lighted conditions and zero-illumination can occur as long as ingress and egress points to Flowering areas remain constantly illuminated for recording purposes.

6. Areas where Regulated Marijuana is grown, tested, cured, manufactured, researched, or stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.

7. Cameras shall also be placed at each location where weighing, packaging, transport preparation, processing, or tagging activities occur.

8. At least one camera must be dedicated to record the access points to the secured surveillance recording area.

9. All outdoor cultivation areas must meet the same video surveillance requirements applicable to any other indoor Limited Access Areas.

D. Location and Maintenance of Surveillance Equipment.

1. The surveillance room or surveillance area shall be a Limited Access Area.

2. Surveillance recording equipment must be housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division, and the relevant Local Licensing Authority or Local Jurisdiction, state or local law enforcement agencies for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, and service personnel or contractors.

3. Licensees must keep a current list of all authorized employees and service personnel who have access to the surveillance system and/or room on the Licensed Premises. Licensees must keep a surveillance equipment maintenance activity log on the Licensed Premises to record all service activity including the identity of the individual(s) performing the service, the service date and time and the reason for service to the surveillance system.

4. Off-site Monitoring and video recording storage of the areas identified in this Rule 3-225(C) by the Licensee or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site Monitoring.

5. Each Regulated Marijuana Business Licensed Premises located in a common or shared building, or commonly owned Regulated Marijuana Businesses located in the same Local Jurisdiction, must have a separate surveillance room/area that is dedicated to that specific Licensed Premises. Commonly-owned Regulated Marijuana Businesses located in the same Local Jurisdiction may have one central surveillance room located at one of the commonly owned Licensed Premises which simultaneously serves all of the commonly-owned Licensed Premises. The facility that does not house the central surveillance room is required to have a review station, printer, and map of camera placement on the premises. All minimum requirements for equipment and security standards as set forth in this section apply to the review station.

6. Licensed Premises that combine both a Medical Marijuana Business and a Retail Marijuana Business may have one central surveillance room located at the shared Licensed Premises. *See* Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation.

E. Video Recording and Retention Requirements.

1. All camera views of all Limited Access Areas must be continuously recorded 24 hours a day. The use of motion detection is authorized when a Licensee can demonstrate that monitored activities are adequately recorded.

2. All surveillance recordings must be kept for a minimum of 40 days and be in a format that can be easily accessed for viewing. Video recordings must be archived in a format that ensures authentication of the recording as legitimately captured video and guarantees that no alteration of the recorded image has taken place.

3. The Licensee's surveillance system or equipment must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the areas identified in this Rule 3-225(C).

4. The date and time must be embedded on all surveillance recordings without significantly obscuring the picture. The date and time must synchronized with any point-of-sale system.

5. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at: http://www.time.gov.

6. After the 40 day surveillance video retention schedule has lapsed, surveillance video recordings must be erased or destroyed prior to: sale or transfer of the facility or business to another Licensee; or being discarded or disposed of for any other purpose. Surveillance video recordings may not be destroyed if the Licensee knows or should have known of a pending criminal, civil, or administrative investigation, or any other proceeding for which the recording may contain relevant information.

F. Other Records.

1. All records applicable to the surveillance system shall be maintained on the Licensed Premises. At a minimum, Licensees shall maintain a map of the camera locations, direction of coverage, camera numbers, surveillance equipment maintenance activity log, user authorization list, and operating instructions for the surveillance equipment.

2. A chronological point-of-sale transaction log must be made available to be used in conjunction with recorded video of those transactions.

Basis and Purpose – 3-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), and 44-10-203(2)(h), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish waste disposal requirements for Regulated Marijuana Businesses and to provide more sustainable options including for Regulated Marijuana waste including composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification. This Rule 3-230 was previously Rules M and R 307, 1 CCR 212-1 and 1 CCR 212-2.

3-230 – Waste Disposal

A. All Applicable Laws Apply. Regulated Marijuana waste must be stored, secured, locked, and managed in accordance with all applicable federal, state, and local statutes, regulations, ordinances, or other requirements, including but not limited to the "Regulations Pertaining to Solid Waste Sites and Facilities" (6 CCR 1007-2, Part 1) established by the Colorado Department of Public Health and Environment pursuant to the "Solid Wastes Disposal Sites and Facilities Act", Title 30, Article 20, Part 1, C.R.S. and "Regulation No. 100 – Water and Wastewater Facility

Operations Certification Requirements" (5 CCR 1003-2) established by the Colorado Department of Public Health and Environment pursuant to the Title 25, Article 9, Part 1, C.R.S.

B. Liquid Waste. Liquid waste from Regulated Marijuana Businesses shall be disposed of in compliance with all applicable federal, state and local laws, regulations, rules, and other requirements.

C. Chemical, Dangerous and Hazardous Waste. Disposal of chemical, dangerous, and hazardous waste must be conducted in a manner consistent with federal, state and local laws, statutes, regulations, rules, and other requirements. This may include, but is not limited to, the disposal of all Pesticide and other agricultural chemicals, certain solvents and other chemicals used in the production of Regulated Marijuana Concentrate and any Regulated Marijuana soaked in a Flammable Solvent for purposes of producing a Regulated Marijuana Concentrate.

1. Elemental Impurities Remediation. All post extraction plant material generated from the elemental impurities Remediation process, and other Regulated Marijuana waste products (including but not limited to, still bottoms, lipids removed during winterization) generated from the Remediation process have the potential to be hazardous waste. Therefore, all such post extraction plant material must be subject to one of the following actions prior to leaving the Licensed Premises:

i. Treated as hazardous waste in regard to storage, labeling, and disposal; or

ii. Tested for elemental impurities content.

a. Materials that meet the definition of hazardous waste, as defined by the Resource Conservation and Recovery Act or other applicable federal, state, or local regulations, must be treated as hazardous waste. Accordingly, they must be properly labeled, contained, stored, and disposed of in accordance with the Environmental Protection Agency, the Resource Conservation and Recovery Act, and other applicable regulations for hazardous waste.

b. Materials that contain elemental impurities concentrations less than the allowable concentration limits specified in the Resource Conservation and Recovery Act, and are not designated hazardous waste by other applicable federal, state, or local regulations, may be disposed of in accordance with this rule.

D. Regulated Marijuana Waste Must Be Made Unusable and Unrecognizable. Unless expressly exempt by these rules, all Regulated Marijuana waste must be made unusable and Unrecognizable prior to leaving the Licensed Premises.

1. A Regulated Marijuana Business may Transfer Vaporizer Delivery Device waste prior to being made unusable and Unrecognizable for purposes of grinding or compacting the Vaporizer Delivery Device waste at the Licensed Premises of another Regulated Marijuana Business.

E. Methods to Make Waste Unusable and Unrecognizable. Regulated Marijuana waste shall be rendered unusable and Unrecognizable through one of the following methods:

1. Grind or Compact and Mix with Non-Marijuana Waste. A Regulated Marijuana Business may render its Regulated Marijuana waste unusable and Unrecognizable by grinding or compacting and incorporating the marijuana waste with non-consumable, solid wastes

listed below such that the resulting mixture is at least 50 percent non-marijuana waste, and such that the resulting mixture cannot easily be separated and sorted:

a. Paper waste;

b. Plastic waste;

c. Cardboard waste;

d. Food waste;

e. Grease or other compostable oil waste;

f. Bokashi or other compost activators;

g. Soil;

h. Sawdust;

i. Manure; and

j. Other wastes approved by the Division that will render the Regulated Marijuana waste unusable and Unrecognizable.

2. Other Permitted and Sustainable Methods for Rendering Regulated Marijuana Waste Unusable and Unrecognizable. A Regulated Marijuana Business may render its Regulated Marijuana waste unusable and Unrecognizable through the following methods and subject to the following requirements and restrictions:

a. The following methods are exempt from the 50/50 waste mixing requirement in subparagraph E(1) above and can be used to render Regulated Marijuana unusable and Unrecognizable:

i. On-site composting;

ii. Anaerobic digestion;

iii. Pyrolyze into biochar; or

iv. Biomass gasification.

b. Requirements for Other Permitted and Sustainable Methods to Render Regulated Marijuana Waste Unusable and Unrecognizable. A Regulated Marijuana Business using other methods of rendering Regulated Marijuana waste unusable and Unrecognizable must comply with the requirements of this rule.

i. A Regulated Marijuana Business may utilize on its own Licensed Premises or may Transfer Regulated Marijuana waste to another Regulated Marijuana Business for on-site composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification.

ii. A Regulated Marijuana Business may transfer only the stalks, stems, fan leaves, and roots from Regulated Marijuana to an area outside the Licensed Premises that is under the Licensee's possession and control

or to an unlicensed third-party that is registered and in good standing with the Colorado Secretary of State for composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification.

iii. Regulated Marijuana waste that is transferred to a location under the Licensee's possession and control, to another Regulated Marijuana Business, or to a third-party pursuant to this Rule is not required to comply with the 3-800 Series Rules - Inventory Tracking or the 3-1000 Series Rules - Labeling, Packaging, and Product Safety but must be recorded on the Transferring Regulated Marijuana Business' waste log.

iv. A Regulated Marijuana Business or an unlicensed third-party providing Composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification shall ensure that the organic composition of the Regulated Marijuana waste is permanently altered so that it is rendered unusable and Unrecognizable.

v. Waste Management Plan. A Regulated Marijuana Business using on-site composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification to render Regulated Marijuana waste unusable and Unrecognizable must establish and maintain on its Licensed Premises a waste management plan that includes at least the following information: A description of the Regulated Marijuana Business's methods for on-site composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification and identification of the areas that will be used for these activities. The location of these activities may include areas used for other operational activities of the Regulated Marijuana Business or may be areas outside the Licensed Premises so long as such areas are within the Licensee's possession and control.

vi. Written Contract for Transfers to Unlicensed Third Parties. A Regulated Marijuana Business that is transferring stalks, stems, fan leaves, or roots from Regulated Marijuana to an unlicensed third-party for composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification must have a written contract with that third-party. The Regulated Marijuana Business must maintain on its Licensed Premises a copy of the written contract and copies of receipts and invoices related to such third-party services. The written contract with the third-party must document at least the following information:

A. The identity of the unlicensed third party receiving any transfer of Regulated Marijuana waste pursuant to this Rule;

B. A description of the services provided by the unlicensed third party and the agreed-upon methods for managing the Regulated Marijuana waste, including the end-use of such waste; and

C. A requirement that the third-party is registered with the Colorado Secretary of State and must remain in in good standing during the contract term.

F. Mobile Waste Rendering. A Licensee or a third party vendor may also render Regulated Marijuana waste unusable and Unrecognizable outside of the Licensed Premises, subject to the following requirements and restrictions:

1. The waste must be rendered unusable and Unrecognizable in accordance with subparagraph (E) of this Rule, and unless otherwise expressly exempt by this Rule 3-230, mobile waste rendering must occur on property under the control of the Licensee that is immediately adjacent to the Licensed Premises;

2. Unless otherwise expressly exempt by this Rule 3-230, the waste must be taken from the Licensed Premises by an Owner Licensee or Employee Licensee directly to the vehicle where the rendering will occur;

3. Unless otherwise expressly exempt by this Rule 3-230, an Owner Licensee or Employee Licensee must monitor and observe the rendering to ensure the waste is made unusable and Unrecognizable;

4. Unless otherwise expressly exempt by this Rule 3-230, the Licensee shall ensure the rendering of any Regulated Marijuana waste unusable and Unrecognizable by a third party is recorded on the Licensee's video surveillance system; and

5. Any other restrictions imposed by the Local Licensing Authority or Local Jurisdiction.

G. After Waste is Made Unusable and Unrecognizable. After Regulated Marijuana waste is made unusable and Unrecognizable, the rendered waste shall be disposed of or otherwise managed as follows:

1. Disposed of at a solid waste site and disposal facility that has a Certificate of Designation from the local governing authority; or

2. Deposited at a compost facility that is permitted or approved by the Colorado Department of Public Health and Environment; or

3. Regulated Marijuana waste that has been rendered unusable and Unrecognizable by composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification and pursuant to the Licensee's waste management plan(s) may be transferred to a Regulated Marijuana Business or an unlicensed third-party for further processing or use.

4. A Regulated Marijuana Business with cultivation privileges may reintroduce its own or Regulated Marijuana waste obtained from another Regulated Marijuana Business that has been rendered unusable and Unrecognizable into its Regulated Marijuana cultivation operations subject to its standard operating procedures. For example, a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility may use such waste as a soil amendment, potting media, or fertilizer

H. Proper Disposal of Waste. A Licensee shall only dispose of Regulated Marijuana waste in a secured waste receptacle in possession and control of the Licensee.

I. Inventory Tracking Requirements.

1. In addition to all other tracking requirements set forth in these rules, a Licensee shall utilize the Inventory Tracking System to ensure its post-harvest waste and Fibrous Waste materials are identified, weighed, and tracked while on the Licensed Premises until disposed of.

2. All Regulated Marijuana waste must be weighed before leaving any Regulated Marijuana Business. A scale used to weigh Regulated Marijuana waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-

14-127, C.R.S. *See* Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System.

3. A Licensee is required to maintain accurate and comprehensive records regarding Regulated Marijuana waste that accounts for, reconciles, and evidences all waste activity related to the disposal of Regulated Marijuana. *See* Rule 3-905 – Business Records Required.

4. A Licensee is required to maintain accurate and comprehensive records regarding any waste material produced through the trimming or pruning of a Regulated Marijuana plant prior to harvest, which must include weighing and documenting all waste, including Fibrous Waste. Unless required by an Inventory Tracking System procedure, records of waste produced prior to harvest must be maintained on the Licensed Premises. Waste, excluding Fibrous Waste and Marijuana Consumer Waste, whether produced prior or subsequent to harvest, must be disposed of in accordance with this Rule and be made unusable and Unrecognizable. *See* Rule 3-235 – Transfers of Fibrous Waste and Rule 3-240 – Collection of Marijuana Consumer Waste.

Basis and Purpose – 3-235

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(1)(k), and 44-10-203(2)(x), C.R.S. The purpose of this rule is to establish conditions under which a Licensee is authorized to transfer Fibrous Waste to a Person for the purpose of producing only Industrial Fiber Products. This Rule 3-235 was previously Rules M and R 307.5, 1 CCR 212-1 and 1 CCR 212-2.

3-235 – Transfers of Fibrous Waste

A. All Applicable Laws Apply. Fibrous Waste must be stored and managed in accordance with all applicable state and local statutes, regulations, ordinances, or other requirements, including but not limited to the "Regulations Pertaining to Solid Waste Sites and Facilities" (6 CCR 1007-2, Part 1) established by the Colorado Department of Public Health and Environment pursuant to the "Solid Wastes Disposal Sites and Facilities Act", Title 30, Article 20, Part 1, C.R.S. and "Regulation No. 100 – Water and Wastewater Facility Operations Certification Requirements" (5 CCR 1003-2) established by the Colorado Department of Public Health and Environment pursuant to the Title 25, Article 9, Part 1, C.R.S.

B. Regulated Marijuana Cultivation Facilities and Regulated Marijuana Manufacturers may transfer Fibrous Waste to an Industrial Fiber Products Producer in accordance with the requirements of this Rule 3-235.

C. Contract Requirements. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers that transfer Fibrous Waste to an Industrial Fiber Products Producer shall enter into a written contract prior to transferring any Fibrous Waste.

1. The written contract must be complete, and must fully incorporate all terms and conditions.

2. The written contract shall include the following terms:

a. The identity of the Industrial Fiber Products Producer;

b. A requirement that the Industrial Fiber Products Producer shall be and shall remain in good standing with the Colorado Secretary of State during the contract term; and

c. A requirement that the Industrial Fiber Products Producer shall ensure the security of Fibrous Waste during transport from the Licensed Premises to the point of processing by the Industrial Fiber Products Producer.

3. The Licensee and Industrial Fiber Products Producer shall sign an affirmation that the Fibrous Waste is being transferred only for the purpose of producing Industrial Fiber Products. The affirmation may be incorporated into a purchase order, invoice, or manifest.

D. Business Records. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers that transfer Fibrous Waste to an Industrial Fiber Products Producer shall keep all contracts, receipts, and inventory records relating to the transfer of any Fibrous Waste in accordance with Rule 3-905, including but not limited to Rule 3-905(A)(2).

E. Security Measures.

1. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, and Retail Marijuana Products Manufacturers, and Accelerator Manufacturers that transfer Fibrous Waste to an Industrial Fiber Products Producer shall comply with all security requirements pursuant to Rules 3-220 and 3-225.

2. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers preparing Fibrous Waste for transfer to an Industrial Fiber Products Producer must separate Fibrous Waste from other Regulated Marijuana plant material and waste within the Limited Access Area and on video surveillance.

3. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators Retail Marijuana Products Manufacturers, and Accelerator Manufacturers shall physically segregate all Fibrous Waste from other waste and Regulated Marijuana.

4. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers shall affix a label to all receptacles holding Fibrous Waste that has already been separated from other Regulated Marijuana plant material and waste within the Limited Access Area prior to transfer to an Industrial Fiber Products Producer. The label must identify the receptacle as “Contains Fibrous Waste.”

5. An Industrial Fiber Products Producer, or its employee or agent, must sign the visitor log, unless such individual has a valid Division-issued Employee License, to enter the Limited Access Area for any transfer of Fibrous Waste.

6. The Licensee remains responsible for all Fibrous Waste until the Industrial Fiber Products Producer takes possession and removes Fibrous Waste from the Licensed Premises.

7. The Licensee shall ensure that only Fibrous Waste and waste that has been made unusable and Unrecognizable pursuant to Rule 3-320 is transferred to the Industrial Fiber Products Producer.

F. Inventory Tracking Requirements.

1. A Licensee shall utilize the Inventory Tracking System to ensure its post-harvest Fibrous Waste materials are identified, weighed, and tracked while on the Licensed Premises until transferred.

2. A scale used to weigh Fibrous Waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S. *See* Rule 3-805 – Regulated Marijuana Business: Inventory Tracking System.

3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all Fibrous Waste transfers. *See* Rule 3-905 – Business Records Required.

G. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers shall not transfer contaminated Fibrous Waste to an Industrial Fiber Products Producer and shall handle contaminated Fibrous Waste using the same reasonable protocols used to handle waste.

H. Violation Affecting Public Safety. It may be considered a violation of public safety for a Licensee to transfer anything to an Industrial Fiber Products Producer other than in accordance with this Rule 3-235.

Basis and Purpose – 3-240

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), and 44-10-203(2)(bb), C.R.S. The purpose of this rule is to establish conditions under which Regulated Marijuana Businesses are permitted to collect Marijuana Consumer Waste for purposes of reuse and recycling.

3-240 – Collection of Marijuana Consumer Waste

A. All Applicable Laws Apply. Marijuana Consumer Waste must be stored and managed in accordance with all applicable state and local statutes, regulations, ordinances, or other requirements, including but not limited to the "Regulations Pertaining to Solid Waste Sites and Facilities" (6 CCR 1007-2, Part 1) established by the Colorado Department of Public Health and Environment pursuant to the "Solid Wastes Disposal Sites and Facilities Act", Title 30, Article 20, Part 1, C.R.S. and "Regulation No. 100 – Water and Wastewater Facility Operations Certification Requirements" (5 CCR 1003-2) established by the Colorado Department of Public Health and Environment pursuant to the Title 25, Article 9, Part 1, C.R.S.

B. Regulated Marijuana Businesses may collect, reuse, and recycle Marijuana Consumer Waste in accordance with the requirements of this Rule 3-240.

C. Collection, Separation, and Processes.

1. Collection. A Licensee must comply with the following requirements when collecting Marijuana Consumer Waste pursuant to this Rule:

a. Only Medical Marijuana Stores, Retail Marijuana Stores, and Licensed Hospitality Businesses may collect Marijuana Consumer Waste from patients and consumers. Medical Marijuana Stores, Retail Marijuana Stores, and Licensed Hospitality Businesses collecting Marijuana Consumer Waste pursuant to this Rule are not limited to collecting Marijuana Consumer Waste from patients or consumers who purchased Regulated Marijuana from the Medical Marijuana Store, Retail Marijuana Store, or Licensed Hospitality Business.

b. A Regulated Marijuana Business may collect Marijuana Consumer Waste from any of its Owner Licensees or Employee Licensees who purchased the Regulated Marijuana from the Regulated Marijuana Business, or may collect Marijuana Consumer Waste from other Regulated Marijuana Businesses pursuant to paragraph (E) of this Rule.

c. The Licensee must utilize receptacles that are locked, sealed and designed to require a key or specialized tools in order to open and access the contents of the receptacle used for collection of Marijuana Consumer Waste;

d. All receptacles used for collection of Marijuana Consumer Waste shall be located in a secured area on the Licensed Premises and shall be reasonably supervised by a Licensee to ensure any Marijuana Consumer Waste collected is only removed by a Licensee;

e. All receptacles used for collection of Marijuana Consumer Waste shall be recorded on video surveillance; and

f. All receptacles used for collection of Marijuana Consumer Waste shall be labeled. The label must at least identify the receptacle as “Contains Marijuana Consumer Waste.” A Licensee may choose to include additional information on the receptacle label.

2. Separation. Regulated Marijuana Businesses collecting Marijuana Consumer Waste pursuant to this Rule must separate any electronic and battery components from the Marijuana Consumer Waste.

3. Processes. Regulated Marijuana Businesses collecting Marijuana Consumer Waste pursuant to this Rule must establish standard operating procedures that ensure at a minimum any remaining Regulated Marijuana in Marijuana Consumer Waste is removed and destroyed to the extent practicable.

D. Reuse of Marijuana Consumer Waste. Once any remaining Regulated Marijuana has been removed and destroyed pursuant to these rules, a Regulated Marijuana Business may reuse Marijuana Consumer Waste as follows and subject to the following requirements and restrictions:

1. Sanitizing. The Containers have been sanitized and disinfected either by a Regulated Marijuana Business or by a third-party to ensure that they do not contain any harmful residue or contaminants.

2. Child-Resistant Containers. Either the Containers can be reused with new child resistant packaging that complies with 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995); or if new child resistant packaging is not being used, based on a visual inspection, the existing Child-Resistant packaging appears to be in good working order and does not appear to pose a risk of unintended exposure or ingestion of Regulated Marijuana. The visual inspection must ensure such Containers are not brittle or have chips, cracks, or

other imperfections that could compromise the child-resistant properties of the Container or otherwise pose a threat of harm to a patient or consumer.

E. Transfers of Marijuana Consumer Waste. Once any remaining Regulated Marijuana has been removed and destroyed pursuant to these rules, a Regulated Marijuana Business may transfer Marijuana Consumer Waste as follows:

1. A Licensee may Transfer Marijuana Consumer Waste to another Regulated Marijuana Business for purposes of further processing and recycling or for reuse pursuant to this Rule; or

2. A Licensee may transfer Marijuana Consumer Waste, excluding the electronic components and battery components, to a Person for purposes of recycling or for reuse pursuant to this Rule. To the extent required, such Person shall be registered as required by the Colorado Department of Public Health and Environment's regulations at 6 CCR 1007-2, Part 1, Section 8; or

3. A Licensee may transfer the electronic and battery components of Marijuana Consumer Waste to a Person for purposes of recycling in accordance with the Colorado Department of Public Health and Environment's regulations at 6 CCR 1007-3.

F. Business Records. Regulated Marijuana Businesses that collect and Transfer Marijuana Consumer Waste pursuant to this Rule 3-240 shall keep all contracts, standard operating procedures, and receipts relating to the collection and Transfer of any Marijuana Consumer Waste in accordance with Rule 3-905, including but not limited to Rule 3-905(A)(2).

G. Violation Affecting Public Safety. It may be considered a violation affecting public safety for a Licensee to Transfer Marijuana Consumer Waste that has remaining Regulated Marijuana and in a manner other than in accordance with this Rule 3-240.

Basis and Purpose – 3-245

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(dd)(XIII), 44-10-609(1), 44-10-610(1), and 44-10-301(3)(b) C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(f). The purpose of this rule is to establish hours of operation requirements for Regulated Marijuana Businesses. The State Licensing Authority modeled this rule after the Colorado Department of Revenue's liquor rules. This Rule 3-245 was previously Rules M and R 308, 1 CCR 212-1 and 1 CCR 212-2.

3-245 – Selling and Serving Regulated Marijuana – Hours of Operation

A. Hours of Operation.

1. Medical Marijuana Stores and Retail Marijuana Stores shall not sell or serve Regulated Marijuana between the hours of 12:00 a.m. and 8:00 a.m., Mountain Time, Monday through Sunday.

2. Retail Marijuana Hospitality and Sales Businesses shall not sell Retail Marijuana or permit the consumption or use of Retail Marijuana on its Licensed Premises, between the hours of 2:00 a.m. and 7:00 a.m., Mountain Time, Monday through Sunday.

3. Marijuana Hospitality Businesses shall not permit the consumption or use of marijuana on its Licensed Premises, between the hours of 2:00 a.m. and 7:00 a.m., Mountain Time, Monday through Sunday.

4. Regulated Marijuana Businesses with a valid delivery permit shall not make or complete deliveries of Regulated Marijuana at any time between the hours of 12:00 a.m. and 8:00 a.m., Mountain Time, Monday through Sunday. Regulated Marijuana Businesses with a valid delivery permit may accept orders for delivery 24 hours a day, Monday through Sunday.

B. Local Jurisdictions May Further Restrict Hours. Nothing in this Rule shall prohibit a Local Jurisdiction from further restricting hours of operation within its jurisdiction.

3-300 Series – Health and Safety Regulations

Basis and Purpose – 3-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(f), and 44-10-1001(2), C.R.S. The purpose of this rule is to clarify the conditions under which a Regulated Marijuana Business may be subject to an inspection of its Licensed Premises by a county or municipal employee, specifically but not exclusively a fire safety inspection.

3-305 – Local Safety Inspections

A Regulated Marijuana Businesses may be subject to inspection of its Licensed Premises by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet Local Jurisdiction restrictions related to Regulated Marijuana or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety

Basis and Purpose – 3-310

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), and 44-10-313(14)C.R.S. The purpose of this rule is to clarify the minimum health and sanitary conditions under which a Regulated Marijuana Business must maintain its Licensed Premises.

3-310 – General Sanitary Requirements

A. The Licensee shall take all reasonable measures and precautions to ensure the following:

1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Regulated Marijuana shall be excluded from any operations which may be expected to result in contamination until the condition is corrected;

2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;

3. That all persons working in direct contact with Regulated Marijuana shall conform to hygienic practices while on duty, including but not limited to:

    a. Maintaining adequate personal cleanliness;

b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work, prior to engaging in the production of Regulated Marijuana Product, and at any other time when the hands may have become soiled or contaminated; and

c. Refraining from having direct contact with Regulated Marijuana if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.

4. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Regulated Marijuana are exposed;

5. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned, and each is kept clean and in good repair;

6. That there is adequate lighting in all areas where Regulated Marijuana is stored or sold, and where equipment or utensils are cleaned;

7. That the Licensee provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;

8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition, including but not limited to the prevention of microorganism growth;

9. That toxic cleaning compounds, sanitizing agents, and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Regulated Marijuana and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation, or ordinance;

10. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Regulated Marijuana shall be conducted in accordance with adequate sanitation principles;

11. That each Regulated Marijuana Business provides its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

12. That Regulated Marijuana that can support the rapid growth of undesirable microorganisms are held in a manner that prevents the growth of these microorganisms.

Basis and Purpose – 3-315

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(g), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), and 44-10-1001(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). It sets forth general standards and basic sanitary requirements for Retail Marijuana Stores. It covers the physical premises where the products are made as well as the individuals handling the products. This rule authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Regulated Marijuana Business. The purpose of this rule is to establish the conditions under an independent health and safety audit may be required. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Regulated Marijuana Businesses refusal to cooperate or pay for the audit. The State Licensing Authority

intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

3-315 – Independent Health and Safety Audit

A. State Licensing Authority May Require A Health and Sanitary Audit.

1. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Regulated Marijuana Business to undergo such an audit. The scope of the audit may include, but need not be limited, to whether the Regulated Marijuana Business is in compliance with the requirements set forth in this Rule and other applicable health, sanitary, or food handling laws, rules, and regulations.

2. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Regulated Marijuana Business. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

3. The Regulated Marijuana Business will be responsible for all costs associated with the independent health and sanitary audit.

B. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:

1. The Division has reasonable grounds to believe that the Regulated Marijuana Business is in violation of one or more of the requirements set forth in this Rule or other applicable public health or sanitary laws, rules, or regulations;

2. The Division has reasonable grounds to believe that the Regulated Marijuana Business was the cause or source of contamination of Regulated Marijuana;

3. A Regulated Marijuana Cultivation Facility does not provide requested records related to the use of Pesticide or other agricultural chemicals used in the cultivation process;

4. Multiple Harvest Batches or Production Batches produced by a Regulated Marijuana Cultivation Facility failed contaminant testing;

5. A Regulated Marijuana Products Manufacturer does not provide requested records related to the production of Regulated Marijuana Products, including but not limited to, certification of its Licensed Premises, equipment or standard operating procedures, food handling training required for Owner Licensees and Employee Licensees engaged in the production of Regulated Marijuana Products, or Production Batch specific records to the Division;

6. Multiple Production Batches of Regulated Marijuana Products produced by the Regulated Marijuana Products Manufacturer failed contaminant testing.

C. Compliance Required. A Regulated Marijuana Business must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this Rule.

D. Suspension of Operations.

1. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the Licensee committed a deliberate and willful violation or there is a substantial danger to public health and safety and incorporates such findings into its order, it may order summary suspension of the Regulated Marijuana Business's license. *See* Rule 8-210 – Disciplinary Process: Summary Suspensions.

2. Prior to or following the issuance of such an order, the Regulated Marijuana Business may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.

a. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety, or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. *See* Rule 8-210 – Disciplinary Process: Summary Suspensions.

b. If an agreement to suspend operations is reached, then the Regulated Marijuana Business may continue to care for its inventory and conduct any necessary internal business operations, but it may not Transfer any Regulated Marijuana or Regulated Marijuana Product to another Regulated Marijuana Business, a patient, or a consumer during the period of time specified in the agreement

Basis and Purpose – 3-320

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(dd)(X), and 44-10-203(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). This rule prohibits a Regulated Marijuana Business from Transferring any contaminated Regulated Marijuana or Regulated Marijuana Product to any Person or another Regulated Marijuana Business. Additionally, this rule provides permitted approved decontamination methods that a Licensee may utilize in the course of their business. These provisions outline the minimum requirements a Licensee must comply with to utilize approved decontamination methods and do not reflect an endorsement of these methods.

Please Note: *The following proposed rule revisions are the results of ongoing discussions with and proposals stakeholders through the MED-CDPHE Quarterly Science and Policy Forum. While MED has been actively engaged through stakeholder discussions and surveys to understand the decontamination methods being used in the industry today, we are continuing to evaluate, seeks feedback on, and will determine prior to the permanent rulemaking hearing whether to propose these revisions for final adoption. Specifically, MED is requesting feedback and input from stakeholders regarding the following questions related to all methods of decontamination (as relevant) that may be incorporated into rules:*

1. *Do any of the methods proposed introduce occupational or product safety concerns that should be flagged for discussion or otherwise addressed through proposed rule revisions?*
2. *Are there additional safety requirements that should be required for any of the methods proposed?*
3. *Do the proposed rule revisions adequately address concerns regarding the uniform treatment of Harvest Batches? Are there recommendations for additional language to ensure uniform treatment of Harvest Batches?*

4. Should products that have been subject to decontamination following a failed test have any additional testing requirements such as potency because of potential impacts from the decontamination method?

5. Should products that have been subject to decontamination be required to include additional labeling?

3-320 – Contaminated Product & Approved Decontamination Methods

A. A Regulated Marijuana Business shall not accept or Transfer to any Person any Regulated Marijuana that has failed required testing pursuant to Rule 4-120 or Rule 4-125, unless otherwise permitted in these rules. *See* Rule 4-135. If, despite the prohibitions in these rules, another Regulated Marijuana Business Transfers any Regulated Marijuana that has failed or subsequently fails required testing pursuant to Rule 4-120 or Rule 4-125, the receiving Regulated Marijuana Business shall ensure that all Regulated Marijuana that failed required testing are safely disposed of in accordance with Rule 3-230.

B. Approved Decontamination Methods. Licensees are permitted to use only approved Decontamination techniques to treat an entire Harvest Batch or Production Batch. Licensees must not use a technique to treat a Test Batch alone. The following methods are approved for use as Decontamination:

1. Ozone treatment.

a. Equipment requirements: Non-enclosed ozone generating equipment. A Licensee who seeks to use non-enclosed ozone generating equipment for Decontamination must comply with the following safety requirements, which must be documented in a standard operating procedure:

i. Sufficient air filtration and/or handling systems to protect worker safety, meet manufacturer safety recommendations, and comply with any federal, state, or local regulations pertaining to ozone generating equipment, exposure limits, and exhaust; and

ii. Review by an Industrial Hygienist that includes, at a minimum:

A. Consideration of volume and storage of chemicals;

B. Fire safety considerations;

C. Ambient levels of chemicals (e.g. ozone, etcetera);

D. Environmental monitoring;

E. Appropriate personal protective equipment (PPE); and

F. Any Material Change in the Licensee's standard operating procedures or processes requires subsequent Industrial Hygienist review and approval.

b. Equipment requirements: Sealed enclosure ozone generating equipment. A Licensee who seeks to use sealed enclosure ozone generating equipment for Decontamination must comply with the following safety requirements, which must be documented in a standard operating procedure:

i. Sufficient air filtration and/or handling systems to protect worker safety, meet manufacturer safety recommendations, and comply with any federal, state, or local regulations pertaining to ozone generating equipment, exposure limits, and exhaust; and

ii. To be considered a sealed enclosure, the equipment must have a device that degrades ozone into molecular oxygen (O_2) or other components that are safe for human exposure

2. X-ray irradiation in a sealed enclosure instrument. A Licensee who uses x-ray irradiation in a sealed enclosure instrument for Decontamination must comply with the following safety requirements, which must be documented in a standard operating procedure:

a. Radiation survey and dosimeter badges for operators in compliance with manufacturer safety recommendations; and

b. Inspection by a Colorado registered qualified inspector and certification by the Colorado Department of Public Health and Environment X-ray Certification Unit.

3. Ultraviolet light (UV) irradiation. A Licensee who seeks to use UV light irradiation for Decontamination must have radiation survey and dosimeter badges for operators in compliance with manufacturer safety recommendations, which must be documented in a standard operating procedure:

4. Microwave. A Licensee who seeks to use microwave for Decontamination must comply with the following safety requirements, which must be documented in a standard operating procedure:

a. Radiation survey and dosimeter badges for operators in compliance with manufacturer safety recommendations; and

b. Microwave equipment used for Decontamination shall be constructed, inside and outside, in a manner that it may be adequately cleaned.

5. Vaporized hydrogen peroxide in a sealed enclosure instrument. A Licensee who seeks to use vaporized hydrogen peroxide in a sealed enclosure instrument for Decontamination must have sufficient air filtration and/or handling systems to protect worker safety, meet manufacturer safety recommendations, and comply with and federal, state or local regulations pertaining to reactive oxygen species generating equipment, exposure limits, and exhaust, which must be documented in a standard operating procedure.

C. Required Safety Measures. A Licensee who seeks to use any of the above approved Decontamination methods must have standard operating procedures that also include:

1. Proper training of personnel operating the equipment or working in the vicinity of the equipment;

2. Proper use of appropriate personal protective equipment (PPE) and requiring that PPE be worn by anyone working in the vicinity of the decontamination equipment;

3. Compliance with all manufacturer safety recommendations; and

4. Any additional safety mitigation measures recommended by the manufacturer.

D. The Decontamination method must be accurately documented in the Inventory Tracking System for packages that have been decontaminated.

a. Uniform treatment of Harvest Batches prior to Sample Increment Collection is required. Storage of Test Batches after collection and prior to Transfer to a Licensed Marijuana Testing Facility shall be consistent with storage conditions of the Harvest Batch that they were pulled from, including but not limited to temperature, airflow, and humidity. Equipment used for Decontamination shall be located in a Limited Access Area of the Licensed Premises.

b. Equipment used for Decontamination shall be used exclusively for the purpose of Decontamination.

c. No other activity is permitted to be used including, but not limited to preparing food.

E. Decontamination Methods Approval Process. A Licensee may submit a request to the Division to consider approval of a Decontamination method not permitted under this Rule. The request must include scientific data and evidence on the principles and efficacy of the method and detail all aspects of the Decontamination method including associated safety risks and appropriate safety mitigation steps including training requirements, use of personal protective equipment (PPE), and the appropriate occupational, environmental, and product/consumer safety precautions, including any safety-related manufacturer recommendations.

Basis and Purpose – 3-325

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(dd)(X), and 44-10-203(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to clarify that a Regulated Marijuana Business engaged in the cultivation of Regulated Marijuana is prohibited from using certain chemicals or pesticides that may cause harm to employees or consumers.

3-325 – Prohibited Chemicals

A. Applicability. This Rule 3-325 applies to Medical Marijuana Cultivation Facilities, Retail Marijuana Cultivation Facilities, Accelerator Cultivator and Marijuana Research and Development Licensees.

B. The following chemicals are prohibited and shall not be used in Regulated Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Regulated Marijuana or Regulated Marijuana Concentrate on which any of the following chemicals is detected shall constitute a violation of this Rule.

1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 *et seq*., C.R.S., the Pesticide Applicators' Act, section 35-10-101 et seq., C.R.S., or the rules and regulations pursuant thereto.

2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):

ALDRIN

309-00-2

ARSENIC OXIDE (3)

1327-53-3

ASBESTOS (FRIABLE)

1332-21-4

AZODRIN

6923-22-4

1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-

118-75-2

BINAPACRYL

485-31-4

2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

C. DMSO. Except for R&D Licensees, the use of Dimethylsulfoxide (DMSO) in the production of Regulated Marijuana and the possession of DMSO upon the Licensed Premises is prohibited.

Basis and Purpose – 3-330

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(3)(c), 44-10-203(3)(e), and 44-10-1001, C.R.S. The purpose of this rule is to clarify the minimum health and safety requirements imposed on a Medical or Retail Marijuana Cultivation Facility. The State Licensing Authority has determined the cultivation of Medical or Retail Marijuana requires the application of processes and procedures, and the use of materials, chemicals, and pesticides which, if improperly used, may be potentially harmful to employees and consumers. Therefore, the cultivation of Medical or Retail Marijuana must be performed in a manner that reduces the likelihood of exposure to such materials, chemicals and pesticides, or other microbials or molds. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

3-330 – Cultivation of Regulated Marijuana: Specific Health and Safety Requirements

A. Additional Sanitary Requirements. In addition to the general sanitary requirements in Rule 3-310, a Regulated Marijuana Cultivation Facility shall take all reasonable measure and precautions to ensure the following:

1. That all contact surfaces, including utensils and equipment used for the preparation of Regulated Marijuana, Physical Separation-Based Medical Marijuana Concentrate, or Physical Separation-Based Retail Marijuana Concentrate, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used in a Regulated Marijuana Cultivation Facility;

2. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises' needs. Reclaimed water may also be used only for the cultivation of Regulated Marijuana to the extent authorized under the Reclaimed Water Control Regulations (5 CCR 1002-84), and subject to approval of the Water Quality Control Division of the Colorado Department of Public Health and Environment and the local water provider;

3. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable water, reclaimed water, and waste water lines; and

4. That any room used for the cultivation of Regulated Marijuana has measures to prevent the accumulation of dangerous levels of CO_2.

B. Pesticide Application. A Regulated Marijuana Cultivation Facility may only use Pesticide in accordance with the "Pesticide Act" sections 35-9-101 et seq., C.R.S., the "Pesticides Applicators' Act," sections 35-10-101 et seq., C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. This includes, but shall not be limited to, the prohibition on detaching, altering, defacing or destroying, in whole or in part, any label on any Pesticide. The Colorado Department of Agriculture's determination that the Licensee used any quantity of a Pesticide that would constitute a violation of the Pesticide Act or the Pesticide Applicators' Act shall constitute prima facie evidence of a violation of this Rule.

C. Application of Other Agricultural Chemicals. A Regulated Marijuana Cultivation Facility may only use agricultural chemicals, other than a Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules, and regulations.

Please Note: *The following are stakeholder proposals from the Quarterly Science and Policy Forum that the MED is continuing to evaluate and provide feedback on. The Division continues to have questions, as expressed in previous Science & Policy Forums, related to the operability of these provisions and required resources the Division would need in order to implement, monitor, and manage compliance related to these revisions. For example, the Division urges stakeholders to consider more specific standards that are publicly available and measurable against that can assist both Licensees and the Division in evaluating overall compliance with Reduced Testing Allowance. Additionally, if this proposal moves forward for the State Licensing Authority's consideration, there may be additional terms requiring definitions (e.g. Biological Hazard, Critical Control Point, etc.)*

D. Required Documentation.

1. Standard Operating Procedures. A Regulated Marijuana Cultivation Facility must establish written standard operating procedures for the cultivation, harvesting, drying, curing, trimming, packaging, storing, and sampling for testing of Regulated Marijuana, and the processing, packaging, storing, and sampling for testing of Regulated Marijuana

Concentrate, and the processing, rolling, filling or similar process, packaging, storing and sampling for testing of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana made from Physical Separation-Based Concentrate. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Regulated Marijuana Cultivation Facility.

a. The standard operating procedures must include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process.

b. The standard operating procedures must also include any methods and processes related to Decontamination of Harvest Batches.

i. The standard operating procedures must also include detailed descriptions of any methods and processes related to Decontamination of Harvest Batches including steps to meet safety mitigation requirements associated with the Decontamination method in use. This documentation must demonstrate that appropriate occupational, environmental, and product / consumer safety procedures are in place, including any safety-related manufacturer recommendations. Standard operating procedures must also document steps to ensure uniformity of treatment of the entire Harvest Batch or Production Batch during the Decontamination process.

ii. Use of Decontamination and Remediation techniques must be accurately documented in the Inventory Tracking System.

c. If a Regulated Marijuana Cultivation Facility produces Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana made from Physical Separation-Based Concentrate, the standard operating procedures must include all methods and processes related to the creation of each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana product, including but not limited to, the strains used, where strains are sourced, which parts of Harvest Batches are used (e.g. flower, shake, trim), the size of the product (e.g. 1 gram pre-rolls), and how much and what type of Regulated Marijuana Concentrate is added (if applicable) for each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana it produces.

d. Provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

e. Effective July 1, 2024, a Regulated Marijuana Cultivation Facility may achieve a Reduced Testing Allowance for microbial contaminant testing if the Licensee has a Hazard Analysis and Critical Control Point (HACCP) System containing elements defined in ASTM D8250-19: “Standard Practice for Applying a Hazard Analysis Critical Control Points (HACCP) System for Cannabis Consumable Products” that addresses each product type to receive Reduced Testing Allowance for microbial contaminant testing. This HACCP System must address biological hazards at minimum, and may also address additional hazards such as chemical hazards and physical hazards.

i. If a Critical Control Point (CCP) is found to be outside of the Critical Limits (CLs) established in the HACCP plan during the production of a

Harvest Batch(es) then this Harvest Batch(es) shall be submitted for microbial contaminant testing.

A. If the Harvest Batch passes microbial contaminant testing, then there is no effect on the Reduced Testing Allowance and the Harvest Batch may be Transferred.

B. If the Harvest Batch fails microbial contaminant testing, then the Licensee shall follow Rule 4-120(F)(2) to reauthorize the Reduced Testing Allowance for microbial contaminants.

ii. The HACCP System shall be documented as per ASTM D8250-19.6.1.12. The following records must be kept during the time that a Regulated Marijuana Cultivation Facility qualifies for and maintains a Reduced Testing Allowance for microbial contaminants and for one year after the Reduced Testing Allowance expires for any reason:

A. List of the HACCP team, including relevant experience;

B. Product description and intended use for each product type receiving a Reduced Testing Allowance for microbial contaminants;

C. Verified Process Flow Diagram, including Critical Control Points (CCPs);

D. Hazard Analysis;

E. List of CCPs and reasoning as to how they were identified;

F. List of Critical Limits (CLs) and reasoning as to how they were selected;

G. List of Monitoring Procedures for CCPs;

H. List of pre-planned Corrective Actions in case of deviations;

I. List of verification procedures;

J. HACCP system summary page that includes:

1. CCPs;

2. Critical Limits (CLs);

3. Monitoring Procedures;

4. Corrective Actions related to specific CCPs;

5. Verification procedures; and

6. Record Titles associated with the CCP activities (i.e. The Water Activity Monitoring Logbook, etc.);

K. Support documentation of the CCP validation (i.e. microbial contaminants testing results for Reduced Testing Allowance qualification and maintenance periods); and

L. Documents generated during operational activities related to the HACCP system, including at minimum: Verified Monitoring Logs for CCPs, Corrective and Preventive Actions documentation related to CCPs, and Material Changes related to HACCP system.

2. Material Change. If a Regulated Marijuana Cultivation Facility makes a Material Change to its cultivation procedures, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.

3. Safety Data Sheet. A Regulated Marijuana Cultivation Facility must obtain a safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. A Regulated Marijuana Cultivation Facility must maintain a current copy of the safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.

4. Labels of Pesticide and Other Agricultural Chemicals. A Regulated Marijuana Cultivation Facility must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used during its cultivation process.

5. Pesticide Application Documentation. A Regulated Marijuana Cultivation Facility that applies any Pesticide to any portion of a Regulated Marijuana plant during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:

a. The name, signature, and Employee License number of the individual who applied the Pesticide;

b. Applicator certification number if the applicator is licensed through the Department of Agriculture in accordance with the “Pesticides Applicators’ Act,” sections 35-10-101 et seq., C.R.S.;

c. The date and time of the application;

d. The EPA registration number of the Pesticide applied;

e. Any of the active ingredients of the Pesticide applied;

f. Brand name and product name of the Pesticide applied;

g. The restricted entry interval from the product label of any Pesticide applied;

h. The RFID tag number of the Regulated Marijuana plant(s) that the was applied to or if applied to all plants, a statement to that effect; and

i. The total amount of each Pesticide applied.

E. Adulterants. A Regulated Marijuana Cultivation Facility may not treat or otherwise adulterate Regulated Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight, or smell.

Please Note: *The Division is considering rule revisions related to semi-synthetic and synthetic cannabinoid production, as permitted or prohibited under the authority granted in SB 23-271. In considering whether or not to allow semi-synthetic or synthetic cannabinoid production, the Division has the following questions (also included in the Work Group #1 Agenda):*

1. *What are the range of semi-synthetic or synthetic cannabinoids that regulated marijuana products manufacturers are interested in producing?*
2. *Is there data on demand for these products derived from marijuana?*
3. *What are the scope of risks that we can anticipate if manufacturers are allowed to produce semi-synthetic cannabinoids? Synthetic cannabinoids?*
4. *What public health and safety considerations (consumer, occupational, environmental, hazardous waste, etcetera) should any rules that allow or prohibit production of semi-synthetic or synthetic cannabinoids cover?*
5. *What additional testing requirements should be included in rule if the State Licensing Authority adopts rules that allow manufacturers to produce semi-synthetic cannabinoids? Synthetic cannabinoids?*

Basis and Purpose – 3-335

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-202(2)(y), 44-10-203(3)(b), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-203(3)(g), and 44-10-1001, C.R.S. The State Licensing Authority has determined the manufacturing of Medical or Retail Marijuana Infused Products involves the application of processes and procedures, materials, chemicals, and additives, which, if improperly applied, may cause harm to employees and consumers. Therefore, the purpose of this Rule is to clarify the minimum and specific health and safety requirements imposed on a Medical or Retail Marijuana Products Manufacturing Facility. This Rule clarifies which Edible Medical or Retail Marijuana Products, due to their specific composition, are *per se* practicable to mark with the Universal Symbol but exempts certain Liquid Products from the Universal Symbol requirements. Additionally, the Rule imposes manufacturing and production requirements (e.g. prohibiting products from being shaped like fruit or humans), identifies the standard THC portion, prohibits licensees from using commercial food products to remanufacture Medical or Retail Marijuana Products, and prohibits the use of toxic additives.

3-335 – Production of Regulated Marijuana Concentrate and Regulated Marijuana Products: Specific Health and Safety Requirements

A. Training.

1. Prior to engaging in the manufacture of any Edible Medical Marijuana Product or Edible Retail Marijuana Product each Owner Licensee or Employee Licensee must:

   a. Have a currently valid Food Handler Certificate obtained through the successful completion of an online assessment or print exam; or

   b. Take a food safety course that includes basic food handling training and is comparable to, or is a course given by, the Colorado State University extension service or a state, county, or district public health agency, and must maintain a status of good standing in accordance with the course requirements, including attending any additional classes if necessary. Any course taken pursuant to this rule must last at least two hours and cover the following subjects:

      i. Causes of foodborne illness, highly susceptible populations and worker illness;

      ii. Personal hygiene and food handling practices;

iii. Approved sources of food;

iv. Potentially hazardous foods and food temperatures;

v. Sanitization and chemical use; and

vi. Emergency procedures (fire, flood, sewer backup).

2. A Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer must obtain documentation evidencing that each Owner Licensee or Employee Licensee has successfully completed the examination or course required by this Rule and is in good standing. A copy of the documentation must be kept on file at any Licensed Premises where that Owner Licensee or Employee Licensee is engaged in the manufacturing of an Edible Medical Marijuana Product or Edible Retail Marijuana Product.

B. Other State and Local Health and Safety Standards Apply. A Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer that manufactures Edible Medical Marijuana Products or Edible Retail Marijuana Products shall comply with all kitchen-related health and safety standards of the relevant Local Licensing Authority or Local Jurisdiction and, to the extent applicable, with all Colorado Department of Public Health and Environment health and safety regulations applicable to retail food establishments, as set forth in 6 CCR 1010-2.

C. Additional Sanitary Requirements. A Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer shall take all reasonable measures and precautions to ensure the following:

1. That there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of Regulated Marijuana or Regulated Marijuana Products;

2. That all contact surfaces, including utensils and equipment used for the preparation of Regulated Marijuana or Regulated Marijuana Product, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used by a Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer, and used in accordance with labeled instructions;

3. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises needs;

4. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable and waste water lines; and

5. That storage and transport of finished Regulated Marijuana Product shall be under conditions that will protect products against physical, chemical, and microbial contamination as well as against deterioration of any Container.

D. Product Safety.

1. A Regulated Marijuana Products Manufacturer that manufactures Edible Regulated Marijuana Product shall create and maintain standard production procedures and detailed manufacturing processes for each Edible Medical Marijuana Product or Edible Retail Marijuana Product it manufactures. These procedures and processes must be documented and made available on the Licensed Premises for inspection by the Division, the Colorado Department of Public Health & Environment, and local licensing authorities.

2. Universal Symbol Marking Requirements.

a. The following categories of Edible Medical Marijuana Products and Edible Retail Marijuana Products are considered to be per se practicable to mark, and shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the Regulated Marijuana Product:

i. Chocolate;

ii. Soft confections;

iii. Hard confections or lozenges;

iv. Consolidated baked goods (e.g. cookie, brownie, cupcake, granola bar);

v. Pressed pills and capsules.

b. The Universal Symbol marking shall:

i. Be marked, stamped, or otherwise imprinted in its entirety on at least one side of the Edible Medical Marijuana Product or Edible Retail Marijuana Product. The shape of the product shall not be included or take place of any part of the Universal Symbol;

ii. Be centered either horizontally or vertically on the Edible Medical Marijuana Product or Edible Retail Marijuana Product;

iii. If centered horizontally on the Edible Medical Marijuana Product or Edible Retail Marijuana Product, the height and width of the Universal Symbol shall be of a size that is at least 25% of the product's height, but not less than ¼ inch by ¼ inch.

iv. If centered vertically on the Edible Medical Marijuana Product or Edible Retail Marijuana Product, the height and width of the Universal Symbol shall be of a size that is at least 25% of the product's height, but not less than ¼ inch by ¼ inch.

c. The following categories of Edible Medical Marijuana Product and Edible Retail Marijuana Product are considered to be per se impracticable to mark with the Universal Symbol marking requirements, provided that they comply with labeling and Container requirements of 3-1000 Series Rules.

i. Loose bulk goods (e.g. granola, cereals, popcorn);

ii. Powders;

iii. Liquid Edible Medical Marijuana Products;

iv. Liquid Edible Retail Marijuana Products.

3. Medical Marijuana Products Manufacturer Specific Requirements.

a. Standard Portion of THC. A Medical Marijuana Products Manufacturer may determine a standard portion of THC for each Edible Medical Marijuana Product it manufactures. If a Medical Marijuana Products Manufacturer determines a standard portion for an Edible Medical Marijuana Product, that information must be documented in the product's standard production procedure.

b. Documentation. For each Edible Medical Marijuana Product, the total amount of active THC contained within the product must be documented in the standard production procedures.

c. If a Medical Marijuana Products Manufacturer elects to determine standard portions for an Edible Medical Marijuana Product, then the Universal Symbol shall be applied to each portion in accordance with the requirements of subparagraph (D)(2)(b) of this Rule 3-335. Except that the size of the Universal Symbol marking shall be determined by the size of the portion instead of the overall product size and shall not be less than ¼ inch by ¼ inch.

d. Medical Marijuana Concentrate Recommended Serving Size and Visual Representation.

i. The recommended serving size for Medical Marijuana Concentrate in Vaporized Delivery Devices should not exceed one (1) inhalation lasting two (2) seconds per serving.

ii. The recommended serving size for Medical Marijuana Concentrate intended to be inhaled in any manner other than a Vaporizer Delivery Device is a sphere identified in the tangible educational resource required to be provided to a patient pursuant to Rule 5-125(D) and Rule 5-115(C.5).

4. Retail Marijuana Products Manufacturer Specific Requirements.

a. Standardized Serving of Marijuana. The size of a Standardized Serving of Marijuana shall be no more than 10mg of active THC. A Retail Marijuana Products Manufacturer or an Accelerator Manufacturer that manufactures Edible Retail Marijuana Product shall determine the total number of Standardized Servings of Marijuana for each product that it manufactures. No individual Edible Retail Marijuana Product unit packaged for Transfer to a consumer shall contain more than 100 milligrams of active THC.

b. Documentation. The following information must be documented in the standard production procedures for each Edible Retail Marijuana Product: the amount in milligrams of Standardized Serving of Marijuana, the total number of Standardized Servings of Marijuana, and the total amount of active THC contained within the product.

c. Notwithstanding the requirement of subparagraph (D)(2)(b), an Edible Retail Marijuana Product shall contain no more than 10 mg of active THC per Container and the Retail Marijuana Products Manufacturer or an Accelerator Manufacturer

must ensure that the product is packaged in accordance with the Rules 3-1005(C)(1) and 1010(D)(1), when:

i. The Edible Retail Marijuana Product is of the type that is impracticable to mark, stamp, or otherwise imprint with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable; or

ii. The Edible Retail Marijuana Product is of the type that is impracticable to clearly demark each Standardized Serving of Marijuana or to make each Standardized Serving of Marijuana separable.

d. Liquid Edible Retail Marijuana Product.

i. Pursuant to 44-10-603(4)(b), C.R.S., Liquid Edible Retail Marijuana Products are impracticable to mark with the Universal Symbol and are exempt from the provision in subparagraph (D)(4)(c) of this Rule 3-335 that requires Edible Retail Marijuana Products that are impracticable to mark with the Universal Symbol to contain 10mg or less active THC per Container.

ii. This exemption permits the manufacture and Transfer of Multi-Serving Liquid Edible Retail Marijuana Products so long as the product is packaged in accordance with Rules 3-1005(C)(1) and 3-1010(D)(1)(c)(ii).

e. Multiple-Serving Edible Retail Marijuana Product.

i. A Retail Marijuana Products Manufacturer or an Accelerator Manufacturer must ensure that each single Standardized Serving of Marijuana of a Multiple-Serving Edible Retail Marijuana Product is physically demarked in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving of active THC.

ii. Each demarked Standardized Serving of Marijuana must be easily separable in order to allow an average person 21 years of age and over to physically separate, with minimal effort, individual servings of the product.

iii. Each single Standardized Serving of Marijuana contained in a Multiple-Serving Edible Retail Marijuana Product shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable. The Universal Symbol marking shall comply with the requirements of subparagraph (D)(2)(b) of this Rule 3-335.

iv. A Multiple-Serving Edible Retail Marijuana Product that is a Liquid Edible Retail Marijuana Product shall comply with the requirements in subparagraph (D)(4)(d)(ii) of this Rule 3-335 and is exempt from subparagraphs (i)-(iii) of this subparagraph (D)(4)(e)(iv).

f. Retail Marijuana Concentrate Recommended Serving Size and Visual Representation.

i. The recommended serving size for Retail Marijuana Concentrate in Vaporized Delivery Devices should not exceed one (1) inhalation lasting two (2) seconds per serving.

ii. The recommended serving size for Retail Marijuana Concentrate intended to be inhaled in any manner other than a Vaporizer Delivery Device is a sphere identified in the tangible educational resource required to be provided to a ~~patient~~ consumer pursuant to Rule 6-110(C.5) and Rule 6-1110(C.5).

E. Remanufactured Products Prohibited. A Regulated Marijuana Products Manufacturer shall not utilize a commercially manufactured food product as its Edible Medical Marijuana Product or Edible Retail Marijuana Product. The following exceptions to this prohibition apply:

1. A food product that was commercially manufactured specifically for use by a Regulated Marijuana Products Manufacturer to infuse with Regulated Marijuana shall be allowed. The Licensee shall have a written agreement with the commercial food product manufacturer that declares the food product's exclusive use by the Regulated Marijuana Products Manufacturer.

2. Commercially manufactured food products may be used as Ingredients in an Edible Medical Marijuana Product or Edible Retail Marijuana Product so long as: (1) they are used in a way that renders them unrecognizable as the commercial food product in the final Edible Medical Marijuana Product or Edible Retail Marijuana Product, and (2) the Regulated Marijuana Products Manufacturer does not state or advertise to the consumer that the final Edible Medical Marijuana Product or Edible Retail Marijuana Product contains the commercially manufactured food product.

F. Trademarked Food Products. Nothing in this Rule alters or eliminates a Regulated Marijuana Products Manufacturer's responsibility to comply with the trademarked food product provisions required by the Marijuana Code per section 44-10-503(9)(a-c), C.R.S.

G. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The production, Transfer, and donation of Edible Medical Marijuana Products or Edible Retail Marijuana Products in the following shapes is prohibited:

i. The distinct shape of a human, animal, or fruit; or

ii. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Regulated Marijuana Business. Nothing in this subparagraph (G)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Medical Marijuana Products and Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Medical Marijuana Products and Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

H. Inactive Ingredients.

1. Only non-cannabis derived inactive Ingredients listed in the Federal Food and Drug Administration Inactive Ingredient Database https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, or approved by another equivalent international government agency, may be used in the manufacture of Audited Product and Regulated Marijuana Concentrate intended for use through a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

2. All non-cannabis derived inactive Ingredients contained in any Audited Product or in any Regulated Marijuana Concentrate intended for use through a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler must be less than or equal to the concentration listed in the Federal Food and Drug Administration Inactive Ingredient Database, or approved by another equivalent international government agency for:

   a. The inhalation route of administration for any Audited Product to be used in a metered dose nasal spray, or any Regulated Marijuana Concentrate to be used in a Vaporizer Delivery Device or pressurized metered dose inhaler;

   b. The vaginal route of administration for any Audited Product to be used for vaginal administration; or

   c. The rectal route of administration for any Audited Product to be used for rectal administration.

I. Other Permitted Ingredients. Nothing in paragraph H above prohibits a Regulated Marijuana Products Manufacturer from using marijuana-derived ingredients or Botanically Derived Compounds and/or terpenoids.

J. Processing Aids and Additives. A Regulated Marijuana Products Manufacturer shall not include any Processing Aid or Additive that is toxic, prohibited, or present at levels over the acceptable limits pursuant to Rule 4-115(D) within a Regulated Marijuana Product; nor include any Additive for the purposes of making the product more addictive, appealing to children, or misleading to patients or consumers.

K. Prohibited Ingredients.

1. A Regulated Marijuana Products Manufacturer shall not use the following Ingredients in the production or Transfer of Regulated Marijuana Concentrate and Regulated Marijuana Product for which the inhaled product is the intended use in accordance with Rule 3-1015:

   a. Polyethylene glycol (PEG);

   b. Vitamin E Acetate;

   c. Medium Chain Triglycerides (MCT Oil);

2. A Licensee authorized to manufacture Regulated Marijuana Concentrate or Regulated Marijuana Product shall not use ingredients, other than Regulated Marijuana, with over 0.3% combined D8-THC, D9-THC, D10-THC, Exo-THC or other THC isomers, salts, or salt isomers of tetrahydrocannabinol in the manufacture, production, or Transfer of Regulated Marijuana Concentrate or Regulated Marijuana Product.

L. Standard Operating Procedures.

1. A Regulated Marijuana Products Manufacturer must have written standard operating procedures for each category and type of Medical Marijuana Product or Retail Marijuana Product that it produces.

    a. All standard operating procedures for the production of a Medical Marijuana Concentrate or Retail Marijuana Concentrate must follow the requirements in Rules 5-315 and 6-315.

    b. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Regulated Marijuana Products Manufacturer.

    c. If a Regulated Marijuana Products Manufacturer produces Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana, the standard operating procedures must include all methods and processes related to the creation of each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana product, including but not limited to, the strains used, where strains are sourced, which parts of Harvest Batches are used (e.g. flower, shake, trim), the size of the product (e.g. 1 gram pre-rolls), and how much and what type of Regulated Marijuana Concentrate is added (if applicable) for each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana it produces.

    d. Provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

2. If a Regulated Marijuana Products Manufacturer makes a Material Change to its standard Medical Marijuana Product production process or Retail Marijuana Product production process, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.

M. Expiration Date for Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. Effective July 1, 2022, a Regulated Marijuana Products Manufacturer that produces a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler shall establish an expiration date upon which the Vaporized Delivery Device or Pressurized Metered Dose Inhaler will no longer be fit for consumption. The Licensee shall determine the expiration date by conducting potency and contaminant testing pursuant to Rules 4-120 and 4-125 on the final Vaporizer Delivery Device or Pressurized Metered Dose Inhaler prior to Transfer to ensure the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler can pass potency and contaminant testing prior to the established expiration date.

1. When determining the expiration date for a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler pursuant to this rule, the Licensee shall also consider the following:

    i. Any expiration dates of additives used to produce the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler;

    ii. The interaction with hardware;

    iii. The final formulation within the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler; and

iv. The ideal storage conditions for the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

2. The License may, but is not required to, use accelerated stability tests to demonstrate compliance with this rule.

3. Expiration date determinations, along with any data used to establish the expiration date, shall be documented and maintained in the Licensee's business records pursuant to these rules.

N. DMSO. Except for R&D Licensees, the use of Dimethylsulfoxide (DMSO) in the production of Regulated Marijuana Product and possession of DMSO upon the Licensed Premises is prohibited.

Basis and Purpose – 3-336

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-203(2)(m), 44-10-401(2)(a)(III), 44-10-503, and 44-10-901(1), C.R.S. The purpose of this rule is to establish minimum requirements for a recall plan, the process by which the Division or a Regulated Marijuana Business initiates a product recall, the requirements any recall must meet, and how such recall is terminated.

3-336 – Recall of Regulated Marijuana

A. Effective Date. This Rule is effective January 1, 2021.

B. Applicability. This Rule 3-336 applies to Medical Marijuana Stores, Medical Marijuana Products Manufacturers, Medical Marijuana Cultivation Facilities, Medical Marijuana Research and Development Facilities, Retail Marijuana Stores, Retail Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Licensed Hospitality Businesses, Accelerator Cultivators, Accelerator Manufacturers, and Accelerator Stores.

C. Initiating a Recall. A Regulated Marijuana Business subject to this Rule 3-336 may voluntarily initiate a recall at any time or a recall may be initiated at the request of the Division. A Regulated Marijuana Business subject to this rule must comply with the requirements of this Rule 3-336.

1. Division Requests for Recalls:

i. If the Division requests a Regulated Marijuana Business to initiate a recall pursuant to this rule, the Division's correspondence, which may be electronic, must include the reasons for the recall request and any other information necessary for the Regulated Marijuana Business to initiate a recall pursuant to this rule.

ii. A recall request issued by the Division does not require that a Regulated Marijuana Business initiate a recall. However, if the Division has reasonable grounds to believe a Licensee's Regulated Marijuana is contaminated or otherwise presents a risk to public safety, the Division may require a Regulated Marijuana Business to quarantine affected Regulated Marijuana Inventory pursuant to Rules 4-115 and 4-135.

D. Recall Plan Required. A Regulated Marijuana Business subject to this Rule 3-336 must have a written recall plan. A recall plan shall include, but is not limited to the following:

1. Evaluation of a Complaint or Condition. A Regulated Marijuana Business subject to this rule must maintain a record of all complaints it receives regarding the quality of Regulated Marijuana that has any potential negative impact to health or regarding an adverse reaction. To the extent known after reasonable diligence to ascertain the information, the record must contain the name of the complainant, the purchase date, the location of where the product was purchased, the date the complaint was received, the nature of the complaint, the steps taken to investigate the complaint, the response to the complaint, and the name and Production or Harvest Batch number for the Regulated Marijuana subject to the complaint.

    a. If an initial assessment indicates a recall may be necessary, the Regulated Marijuana Business shall take the following measures:

        i. Determine the hazard and evaluate the safety concerns with the product;

        ii. Undertake necessary product quarantine measures for any affected Regulated Marijuana in the Licensee's possession or control; and

        iii. Determine the product removal strategy appropriate to the threat and location in commerce.

2. Identification of Affected Regulated Marijuana. A recall plan must establish a process for identifying affected Regulated Marijuana subject to a recall, which shall include the following:

    a. Distribution List. When identifying Regulated Marijuana subject to a recall, the Licensee shall create a distribution list that includes the following information:

        i. The name, license number, and address of the Regulated Marijuana Business(es) that received the Regulated Marijuana subject to the recall;

        ii. Ship or Transfer date(s) for the Regulated Marijuana subject to the recall; and

        iii. Business contact information for each Regulated Marijuana Business that received Regulated Marijuana subject to the recall, including names and telephone numbers.

    b. Product Information. When identifying Regulated Marijuana subject to a recall, the Licensee shall document the following product information:

        i. The category of Regulated Marijuana (e.g. Medical Marijuana flower; Medical Marijuana Concentrate; Medical Marijuana Product; Retail Marijuana flower; Retail Marijuana Concentrate, Retail Marijuana Product);

        ii. Product description;

        iii. Net contents;

        iv. Production or Harvest Batch number;

        v. The license number(s) for the Regulated Marijuana Business(es) that cultivated or manufactured the product(s) subject to the recall; and

vi. To the extent known after reasonable diligence to ascertain the information, the recall plan must also include the following additional product information: The amount of affected Regulated Marijuana returned in response to the recall and the amount of affected Regulated Marijuana that remains in the marketplace.

3. Notification to Affected Parties.

a. A Licensee initiating a recall pursuant to this rule shall issue a recall notice to Regulated Marijuana Businesses identified on the Licensee's distribution list.

b. No later than 48 hours from issuing a recall notice to Regulated Marijuana Businesses on the Licensee's distribution list, the Licensee shall issue the following additional notifications:

i. The Licensee shall notify the Division and the Colorado Department of Public Health and Environment;

ii. The Licensee shall notify the Local Licensing Authority or Local Jurisdiction in which the Licensee issuing the recall is located; and

iii. The Licensee shall notify patients or consumers using the most effective method available, which may include any of the following methods: an email to the patient or customer list serve, an alert on the Regulated Marijuana Business' website, a warning that is clearly and visibly posted on the Regulated Marijuana Business' Licensed Premises, or a press release to notify patients or consumers.

c. Recall Notice. A recall notice issued by a Regulated Marijuana Business pursuant to this rule shall include at least the following information:

i. The reason for recall and related hazards, if any. If the Regulated Marijuana is being removed for quality rather than health reasons, the notice may state that the Regulated Marijuana does not meet internal company specifications and is being removed from distribution;

ii. The category of Regulated Marijuana (e.g. Medical Marijuana flower; Medical Marijuana Concentrate; Medical Marijuana Product; Retail Marijuana flower; Retail Marijuana Concentrate, Retail Marijuana Product);

iii. Regulated Marijuana Businesses that received the Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana Concentrate or Retail Marijuana Product;

iv. The license number(s) and name(s), including trade name(s), of the Regulated Marijuana Business(es) that cultivated or manufactured the product(s) subject to the recall;

v. Product description(s) for Regulated Marijuana subject to the recall;

vi. Production or Harvest Batch number(s) for the Regulated Marijuana subject to the recall;

vii. Expiration date(s) for the Regulated Marijuana subject to the recall, if applicable;

viii. Ship or Transfer date(s) for the Regulated Marijuana subject to the recall; and

ix. Instructions regarding the disposition of the Regulated Marijuana subject to the recall.

4. Removal of Affected Regulated Marijuana.

a. Removal. A Regulated Marijuana Business subject to this Rule 3-336 shall make all reasonable efforts to remove the affected Regulated Marijuana from commerce. Affected Regulated Marijuana that is either still in control of the originating Regulated Marijuana Business or in commerce shall be, secured, segregated, clearly labeled not for sale or distribution and separated from any other Medical Marijuana Concentrate, Medical Marijuana Product(s), Retail Marijuana Concentrate, or Retail Marijuana Product(s).

b. Final Product Disposition. At the discretion of the Regulated Marijuana Business contaminated product must be disposed by either:

i. Destroying and documenting the destruction of the affected Regulated Marijuana pursuant to Rule 3-230; or

ii. If possible, Decontaminating the affected Regulated Marijuana pursuant to Rule 4-135(B)(2). If the Regulated Marijuana cannot be decontaminated, it must be destroyed pursuant to Rule 4-135(B)(3)(c) and 3-230.

c. Recall Effectiveness. A Regulated Marijuana Business initiating a recall pursuant to this rule is responsible for determining whether the recall is effective. The Licensee shall complete recall effectiveness checks to verify that all receiving Licensees have been notified and have taken the appropriate action.

i. Effectiveness checks shall determine:

A. If the receiving Licensee received the recall notification;

B. If the recalled Regulated Marijuana was handled as instructed in the recall notification; and

C. If the Regulated Marijuana was further distributed or sold by the receiving Licensee before receipt of the recall notification, and if so, were these additional Licensees notified.

ii. If 100 percent of the affected Regulated Marijuana has been accounted for, then no effectiveness checks are required.

d. Termination of Recall. A Regulated Marijuana Business initiating a recall pursuant to this rule may terminate the recall when the Licensee determines that all reasonable efforts have been made to remove or correct the affected Regulated Marijuana in accordance with the recall plan, and when it is reasonable to assume that the Regulated Marijuana subject to the recall has

been removed and proper disposition or correction has been made commensurate with the degree of hazard of the recalled Regulated Marijuana.

i. Upon termination of the recall, the Regulated Marijuana Business shall provide notice to the Division with a recall status report and a description of the disposition of the recalled Regulated Marijuana. The recall status report shall contain the following information:

A. Number of receiving Licensees notified of the recall, the date and method of notification;

B. Number of receiving Licensees who responded to the recall notice and both the quantity of affected Regulated Marijuana in the possession of the Licensee at the time of response, and quantity of affected Regulated Marijuana returned or corrected;

C. Number and results of the effectiveness checks that were made; and

D. Estimated time frame for completion of the recall.

Basis and Purpose – 3-340

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(l), 44-10-203(2)(m), and 44-10-901(1), C.R.S. The purpose of this Rule is to clarify that a Regulated Marijuana Businesses failure to comply with the requirements of 3-300 Rules Series may jeopardize the public health and safety.

3-340 – Violation Affecting Public Safety

A violation of these 3-300 Rules may be considered a license violation affecting public safety.

Basis and Purpose – 3-345 {Emergency rule expired 05/11/2021]

Rule 3-345 – [Emergency rule expired 05/11/2021]

3-400 Series – Acceptable Forms of Identification for Regulated Marijuana Sales

Basis and Purpose – 3-405

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-10-203(2)(z), 44-10-401(2)(a)(I), 44-10-401(2)(b)(I), 44-10-501(3)(b), 44-10-501(3)(c), 44-10-501(3)(d), 44-10-501(4), 44-10-501(10)(b)(II), 44-10-601(3)(b), 44-10-701(1)(b), 44-10-701(2)(a), 44-10-701(4)(a), and 44-10-701(5)(a), C.R.S. The purpose of this rule is to establish guidelines for the acceptable forms of identification for verifying the lawful sale of Regulated Marijuana. This Rule 3-405 was previously Rule M 405, 1 CCR 212-1, and Rule R 404, 1 CCR 212-2.

3-405 – Identification

A. Medical Marijuana Transfers.

1. Necessary Identification. Medical Marijuana Stores may only Transfer Medical Marijuana to any patient or primary caregiver who is permitted to deliver Medical Marijuana to homebound patients or minor patients as permitted by section 25-1.5-106(9)(e), C.R.S., if the patient or caregiver can produce:

a. Proof of identification that complies with subparagraphs (C) and (D) of this Rule; and

b. Either a valid patient registry card, including any valid and verified digital registry card, or a copy of a current and complete new application for the Medical Marijuana registry that is documented by proof of submittal to the Colorado Department of Public Health and Environment within the preceding 35 days.

2. Physical Inspection Required. A Licensee must physically view and inspect the patient or primary caregiver's registry card, including any valid and verified digital registry card, and proof of identification to confirm the information contained on the documents and also to judge the authenticity of the documents presented.

3. Valid and Verified Registry Card. For the purposes of these rules, a valid and verified digital registry card may include:

a. A hard copy of the patient's registry card; or

b. A portable document format (PDF) of the patient's registry card presented on a phone or other portable device.

i. If a patient is presenting his or her registry card on a phone or other portable device, the PDF of the registry card must be presented.

ii. A screen shot of the patient's profile, text image of a blank card, or photo of the hard copy is unacceptable.

B. Retail Marijuana Transfers. An Accelerator Store, a Retail Marijuana Store, or a Retail Marijuana Hospitality and Sales Business may only Transfer Retail Marijuana to a consumer that first produces a form of identification that complies with subparagraphs (C) and (D) of this Rule establishing the consumer is 21 years of age or older.

1. Fraudulent Identification and Licensee's Burden. Pursuant to section 44-10-601(3)(b)(I), C.R.S., if a person under 21 years of age presents a fraudulent proof of age to a Retail Marijuana Store, or an Accelerator Store any action based upon the fraudulent proof of age shall not be grounds for the revocation or suspension of a license. To establish that the identification presented by the minor was a fraudulent proof of age, the Licensee must establish that:

a. The minor presented fraudulent identification of the type established in subparagraph (C) below;

b. During the transaction in which Retail Marijuana was Transferred to the minor, the Licensee inspected the identification provided, compared the identification to the person presenting the identification, and:

i. Inspected an identification book issued within the past three years:

ii. Used an electronic scanner;

iii. Used an ID checking software or other device used in the inspection of identification; or

iv. Used other ID security features.

C. Forms of Valid Identification. The kind and type of identification deemed adequate shall be limited to the following, including any valid and verified digital identification:

1. An operator's, chauffeur's, or similar type driver's license, including a temporary license issued by any state within the United States, District of Columbia, or any U.S. territory;

2. An identification card, including a temporary identification card, issued by any state within the United States, District of Columbia, or any U.S. territory, for the purpose of proof of age using requirements similar to those in sections 42-2-302 and 42-2-303, C.R.S.;

3. A United States military identification card or any other identification card issued by the United States government including but not limited to a permanent resident card, alien registration card, or consular card;

4. A passport or passport identification card; or

5. An Enrollment card issued by the governing authority of a federally recognized Indian tribe, if the enrollment card incorporates proof of age requirements similar to sections 42-2-302 and 42-2-303, C.R.S.

D. Identification Must Be Valid. A Licensee shall refuse the Transfer of Regulated Marijuana if a person produces identification that is invalid or expired.

3-500 Series – Responsible Vendor Program

Basis and Purpose – 3-505

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-203(2)(dd)(II), 44-10-609(3)(b), 44-10-1201, and 44-10-1202, C.R.S. The purpose of this rule is to establish the standards for a person, employee, manager, or Controlling Beneficial Owner, Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, Retail Marijuana Transporter, Marijuana Hospitality Businesses, and Retail Marijuana Hospitality and Sales Businesses to obtain and maintain a "responsible vendor" designation. This rule identifies Licensees required to attend the Approved Training Program and requirements to maintain a "responsible vendor" designation after initially being designated a "responsible vendor." This Rule 3-505 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-505 – General Standards for Responsible Vendor Designations

A. Pursuant to section 44-10-1202, C.R.S., a Regulated Marijuana Business Licensee, Owner Licensee, or Employee Licensee shall comply with these 3-500 Series Rules to be designated a "responsible vendor" of Regulated Marijuana.

B. Regulated Marijuana Business Responsible Vendor Designation. To be designated a "responsible vendor" as a Regulated Marijuana Business all Controlling Beneficial Owners with day-to-day operational control of the Licensed Premises, management personnel with responsibility over sales or training of employees who engage in sales or other consumer, primary caregiver, or patient interactions, and Employee Licensees involved in the handling and Transfer of Regulated Marijuana must have successfully completed an Approved Training Program.

C. Individual Responsible Vendor Designation. A person, Employee Licensee, manager, or Controlling Beneficial Owner may receive a "responsible vendor" designation upon successful completion of an Approved Training Program.

D. Maintaining Responsible Vendor Designation.

1. After initial successful completion of a responsible vendor program, each Controlling Beneficial Owner with day-to-day operational control of the Licensed Premises, management personnel, and Employee Licensee of a Regulated Marijuana Business, as described in subparagraph (B) of this Rule, shall successfully complete an Approved Training Program once every two years thereafter for the Regulated Marijuana Business to maintain its designation as a "responsible vendor."

2. Once a Regulated Marijuana Business License is designated a "responsible vendor," all new Controlling Beneficial Owners with day-to-day operational control, new managers, or employees with responsibility over sales or training of employees who engage in sales or other consumer, primary caregiver, or patient interactions shall successfully complete the training described in these 3-500 Series Rules within 90 days of becoming employed or an owner.

3. If an Employee Licensee with a "responsible vendor" designation leaves the employment of a Regulated Marijuana Business and is employed by another Regulated Marijuana Business, the Employee Licensee does not have to receive a new "responsible vendor" designation until the Employee Licensee's current "responsible vendor" designation expires.

4. If an Employee Licensee or Controlling Beneficial Owner has a valid "responsible vendor" designation upon hiring or becoming a Controlling Beneficial Owner, then the Regulated Marijuana Business must verify the designation within 90 days to maintain the Regulated Marijuana Business's "responsible vendor" designation.

E. Documentation Required. Information or documentation related to a "responsible vendor" designation must be maintained in accordance with Rule 3-905 of these Rules.

1. An Employee Licensee or Controlling Beneficial Owner with a valid "responsible vendor" designation is responsible for maintaining information related to the designation, including but not limited to the date(s) the Employee Licensee or Controlling Beneficial Owner took the Approved Training Program and the Responsible Vendor Training Program Provider's information.

2. A Regulated Marijuana Business is responsible for maintaining information related to a "responsible vendor" designation, including but not limited to the Employee Licensee(s) or Controlling Beneficial Owner(s) who have passed an Approved Training Program and the date(s) of such training.

F. Failure to Complete Approved Training Program or Verify Valid Responsible Vendor Designation. If within 90 days of hire an Employee Licensee or Controlling Beneficial Owner either fails to successfully complete an Approved Training Program, or the Regulated Marijuana Business fails to verify the new employee, manager, or Controlling Beneficial Owner has a valid "responsible vendor" designation, then the Regulated Marijuana Business will lose its "responsible vendor" designation.

Basis and Purpose – 3-510

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(2)(v), and 44-10-203(1)(k), 44-10-1201, 44-10-1202, C.R.S. The purpose of this rule is to establish general application and notification requirements for Responsible Vendor Program Providers. This Rule 3-510 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-510 – General Standards for Responsible Vendor Program Provider

A. An application for approval of a responsible vendor program pursuant to section 44-10-1201 or 44-10-1202, C.R.S., shall be made upon current forms prescribed by the Division and in accordance with the 2-200 Series Rules.

B. Changes to an Approved Program. Within 30 days of any changes to the Marijuana Code, or these rules, a Responsible Vendor Program Provider shall update its responsible vendor program curriculum with any such changes.

Basis and Purpose – 3-515

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-203(2)(dd)(II), 44-10-609(3)(b), 44-10-1201, and 44-10-1202, C.R.S. The purpose of this rule is to provide the general standards for an Approved Training Program including the minimum amount of instruction time required, that the training must be provided in a classroom setting which may be virtual or online and the testing and passing score requirements for successful completion of the Approved Training Program. This Rule 3-515 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-515 – Certification Training Program Standards

A. No owner or employee of a responsible vendor program may have an Owner's Interest in a Regulated Marijuana Business.

B. A Responsible Vendor Program Provider shall submit their responsible vendor program for approval every two years in order to maintain designation as a Responsible Vendor Program Provider. The renewal application must be submitted within 60 days of the expiration of the Approved Training Program.

C. The responsible vendor program shall include at least two hours of instruction time.

D. Classroom setting. The responsible vendor program shall be taught in a classroom setting where the instructor is able to verify the identification of each individual attending the responsible vendor program and certify completion of the responsible vendor program by the individual identified.

1. An Approved Training Program may be delivered in an on-line or virtual based classroom setting provided the Responsible Vendor Program Provider utilizes a learning management system or other means to verify the identification of each individual attending the responsible vendor program. For purposes of this Rule, a learning management system means the platform or database used to monitor participation, attendance, and to deliver core-curriculum materials.

2. Any Approved Training Program delivered in an on-line or virtual based classroom setting must comply with the core curriculum and assessment requirements of Rule 3-520.

E. The Responsible Vendor Program Provider shall maintain its training records in a format that is readily understood by a reasonably prudent business person during the applicable year and for the following three years. The Responsible Vendor Program Provider shall make the records available for inspection by the State Licensing Authority upon request during normal business hours.

F. The responsible vendor program shall provide to the Licensee written or electronic documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee.

1. Successful completion of an Approved Training Program requires a minimum passage score of 70% or better. A Responsible Vendor Program Provider may provide a reasonable testing accommodation or modification to a Licensee participant, provided the results of the test are documented and meet the minimum passing score requirement.

G. A Responsible Vendor Program Provider shall solicit effectiveness evaluations from individuals who have completed the Approved Training Program.

Basis and Purpose – 3-520

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-203(2)(dd)(II), 44-10-609(3)(b), 44-10-1201, and 44-10-1202, C.R.S. The purpose of this rule is to establish the required curriculum for an Approved Training Program. This rule also includes the required additional curriculum for Licensees engaged in delivery activity pursuant to a valid delivery permit and employees and Controlling Beneficial Owners of a Licensed Hospitality Businesses. This Rule 3-520 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-520 – Certification Training Class Core Curriculum

When considering whether to approve a responsible vendor program, the Division, after consulting with the Colorado Department of Public Health and Environment, will consider the following criteria.

A. Discussion concerning the health and safety concerns of marijuana use. Training shall include:

1. Health effects of marijuana use, including but not limited to the effects in connection with pregnancy and breast-feeding;

2. The amount of time to feel impairment based on the type of marijuana or marijuana product;

3. Recognizing signs of impairment;

4. The amount of time to wait before driving after marijuana use based on the type of marijuana or marijuana product;

5. Safe storage of marijuana;

6. Responsible use of marijuana; and

7. Appropriate responses in the event of unintentional or over-consumption of marijuana or marijuana product, including but not limited to access to the appropriate resources provided by state and local public health authorities.

B. Transfers to minors. Training shall cover all pertinent Colorado statutes, rules, and regulations.

C. Quantity Limitations on Transfer to Patients and Consumers. Training shall cover all pertinent Colorado statutes, rules, and regulations.

D. Acceptable Forms of Identification. Training shall include:

1. How to check identification;

2. Spotting false identification;

3. Patient Registry Cards issued by the Colorado Department of Public Health and Environment and equivalent patient verification documentation;

4. Provisions for confiscating false identification; and

5. Common mistakes made in verification.

E. Other Key State Laws and Rules That Apply to Medical Marijuana Stores, Medical Marijuana Transporters, Retail Marijuana Stores, Retail Marijuana Transporters Licensed Hospitality Businesses, and their Owners, Management Personnel, and Employees. Training shall include:

1. Local and state licensing and enforcement;

2. Compliance with all Inventory Tracking System regulations;

3. Administrative and criminal liability;

4. License sanctions and court sanctions;

5. Waste handling, management, and disposal;

6. Health and safety standards;

7. Patrons prohibited from bringing marijuana onto licensed premises;

8. Permitted hours of sale;

9. Licensee security and surveillance requirements;

10. Permitting inspections by state and local licensing and enforcement authorities;

11. Licensee responsibility for activities occurring within licensed premises;

12. Maintenance of records;

13. Privacy issues;

14. Applicable laws and regulations concerning Transfers to patients and consumers;

15. Packaging and labeling requirements for Transfers to patients and consumers;

16. How to access the Medical Marijuana Patient Registry website and how to sign up for the Registry's voluntary email list; and

17. Statutory and regulatory requirements related to Regulated Marijuana delivery.

F. Evaluation of Program Participants. The Responsible Vendor Program Provider shall establish that it has an adequate mechanism for evaluating attendees' successful completion of the Approved Training Program.

G. Additional Curriculum for Delivery to Patients and Consumers. In addition to the required curriculum in subparagraphs (B) through (F) above, training provided to any Licensee involved in activity pursuant to a valid delivery permit must also include all Colorado statutes and rules related to delivery of Regulated Marijuana to patients and consumers. Responsible Vendor Program Providers may provide the delivery curriculum as a separate training or as part of the

core curriculum training. Licensees that do not engage in delivery activity are not required to, but may, complete the delivery training. Training provided to Licensees involved in delivery activity must include, but is not limited to:

1. Verification of identification and patient registry cards required before delivering Regulated Marijuana to a patient or consumer;

2. Maintaining confidentiality of patients' and consumers' personally identifiable information;

3. Methods for Licensees to identify themselves and verify the delivery permit during an interaction with law enforcement, Division employees or local regulators; and

4. Strategies to de-escalate potentially dangerous situations which could include development of an emergency action plan.

H. Additional Curriculum for Licensed Hospitality Businesses. In addition to the required curriculum in subparagraphs (B) through (F) above, training provided to Controlling Beneficial Owners of and any Licensee employed by a Licensed Hospitality Business must also include all Colorado statutes and rules related to Licensed Hospitality Businesses. Responsible Vendor Program Providers may provide the hospitality curriculum as a separate training or as part of the core curriculum training. Licensees that are not employed by a Licensed Hospitality Business are not required to, but may, complete the hospitality training. Training provided to Controlling Beneficial Owners of and employees of a Licensed Hospitality Business must include, but is not limited to:

1 Identifying signs of visible impairment including alcohol and drug impairment;

2. Resources to mitigate impaired driving including safe transportation options available to consumers;

3. Understanding customer's varying experience with Regulated Marijuana and options for lower dose Regulated Marijuana Products;

4. Resources available from the Colorado Department of Public Health and Environment regarding responsible Regulated Marijuana use;

5. Ceasing all consumption and other activities until law enforcement, firefighters, emergency medical service providers, or other public safety personnel have completed any investigation or services and left the Licensed Premises of the Licensed Hospitality Business;

6. Methods for Licensees to identify themselves during an interaction with law enforcement, Division employees or local regulators;

7. Poly-substance interactions including but not limited to interactions of Regulated Marijuana with alcohol, prescription and over-the-counter medications and other substances;

8. Risks and potential responses to adverse events such as overconsumption, altitude sickness, dehydration, poly-substance use or other similar events.

9. Strategies to de-escalate interactions with intoxicated consumers and potentially dangerous situations which could include development of an emergency action plan.

3-600 Series – Transport and Storage

Basis and Purpose – 3-605

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-313(5)(b), 44-10-505, and 44-10-605 C.R.S. The purpose of the rule is to provide clarity as to the requirements associated with the transport and delivery of Regulated Marijuana between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices. This Rule 3-605 was previously Rules M and R 801, 1 CCR 212-1 and 1 CCR 212-2.

3-605 – Transport: All Regulated Marijuana Businesses

A. Persons Authorized to Transport. Except as provided in these 3-600 Series Rules, any individual who transports Regulated Marijuana, Regulated Marijuana Vegetative plants, Regulated Marijuana Immature plants, Regulated Marijuana, or Regulated Marijuana Product on behalf of a Regulated Marijuana Business must hold a valid Owner License or Employee License and must be an employee of the Regulated Marijuana Business. An individual who does not possess a current and valid Owner's License or Employee License from the State Licensing Authority may not transport Regulated Marijuana, Regulated Marijuana Vegetative plants, Regulated Marijuana Immature plants, Regulated Marijuana Concentrate, or Regulated Marijuana Product between Licensed Premises.

B. Transport Between Licensed Premises.

1. Regulated Marijuana. Regulated Marijuana shall only be transported by Licensees between Licensed Premises; between Licensed Premises and a permitted off-premises storage facility; and between Licensed Premises and a Pesticide Manufacturer. Licensees transporting Regulated Marijuana are responsible for ensuring that all Regulated Marijuana are secured at all times during transport.

2. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants.

a. Regulated Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule 2-255.

b. Regulated Marijuana Immature plants shall only be transported between Licensed Premises; and between Licensed Premises and a Pesticide Manufacturer.

c. Licensees transporting Regulated Marijuana Vegetative plants and Regulated Marijuana Immature plants are responsible for ensuring that all Regulated Marijuana Vegetative plants and Regulated Marijuana Immature plants are secure at all times during transport. Transportation of Regulated Marijuana Vegetative plants and Regulated Marijuana Immature plants to a permitted off-premises storage facility shall not be allowed. Transport of Regulated Marijuana plants other than Vegetative Plants and Immature plants shall not be allowed.

C. Inventory Tracking System-Generated Transport Manifest Required. A Licensee may only transport Regulated Marijuana if he or she has a copy of an Inventory Tracking System-generated transport manifest that contains all the information required by this Rule and shall be in the format prepared by the State Licensing Authority.

1. A Licensee may elect to use a hard copy or digital copy of an Inventory Tracking System-generated transport manifest. Licensees are required to ensure all information is

preserved with valid and verified signatures on any digital copy of an Inventory Tracking System-generated transport manifest.

2. Regulated Marijuana. A Licensee may transport Regulated Marijuana from an originating location to multiple destination locations so long as the transport manifest correctly reflects the specific inventory destined for specific Regulated Marijuana Businesses and/or Pesticide Manufacturers.

3. Regulated Marijuana Vegetative Plants. A Licensee shall transport Regulated Marijuana Vegetative plants only from the originating Licensed Premises to the destination Licensed Premises due to a change of location that has been approved by the Division pursuant to Rule 2-255.

4. Manifest for Transfers to Pesticide Manufacturers. A Licensee may not transport or permit the transportation of Regulated Marijuana to a Pesticide Manufacturer unless an Inventory Tracking System-generated transport manifest has been generated.

D. Motor Vehicle Required. Transport of Regulated Marijuana shall be conducted by a motor vehicle that is properly registered in the state of Colorado pursuant to motor vehicle laws, but need not be registered in the name of the Licensee. Except that when a rental truck is required for transporting Regulated Marijuana Vegetative plants or Regulated Marijuana Immature plants, Colorado motor vehicle registration is not required.

E. Documents Required During Transport. Transport of Regulated Marijuana shall be accompanied by a copy of the originating Regulated Marijuana Business's business license, the driver's valid Owner's License or Employee License, the driver's valid motor vehicle operator's license, and all required vehicle registration and insurance information.

F. Use of Colorado Roadways. State law does not prohibit the transport of Regulated Marijuana on any public road within the state of Colorado as authorized in this Rule. However, nothing herein authorizes a Licensee to violate specific local ordinances or resolutions enacted by any city, town, city and county, or county related to the transport of Regulated Marijuana.

G. Preparation of Regulated Marijuana for Transport.

1. Final Weighing and Packaging. A Regulated Marijuana Business shall comply with the specific rules associated with the final weighing and packaging of Regulated Marijuana before such items are prepared for transport pursuant to this Rule. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S.

2. Preparation in Limited Access Area. Regulated Marijuana shall be prepared for transport in a Limited Access Area, including the packaging and labeling of Containers or Shipping Containers.

3. Shipping Containers. Licensees may Transfer multiple Containers of Regulated Marijuana in a Shipping Container. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, Local Licensing Authorities, Local Jurisdictions, and state and local law enforcement agency for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose.

a. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping

Container, the Shipping Container shall contain only one Harvest Batch, or Production Batch of Regulated Marijuana. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag

b. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants. Each Regulated Marijuana Vegetative plant that is transported pursuant to this Rule must have a RFID tag affixed to it prior to transport. Each receptacle containing Regulated Marijuana Immature plants transported pursuant to this Rule must have an RFID tag affixed prior to transport.

H. Creation of Records and Inventory Tracking.

1. Use of Inventory Tracking System – Generated Transport Manifest.

a. Regulated Marijuana. Licensees who transport or permit the transportation of Regulated Marijuana shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the Licensed Premises destined for another Licensed Premises or Pesticide Manufacturers. The transport manifest may either reflect multiple destination locations within a single trip or separate transport manifests may reflect each single destination location. In either case, no inventory shall be transported without an Inventory Tracking System-generated transport manifest.

b. Use of a Medical Marijuana Transporter or Retail Marijuana Transporter. In addition to subparagraph (H)(1)(a), Licensees shall also follow the requirements of this subparagraph (H)(1)(b) when a Licensee utilizes the services of a Medical Marijuana Transporter or Retail Marijuana Transporter.

i. When a Medical Marijuana Business utilizes a Medical Marijuana Transporter for transporting its Medical Marijuana, the originating Licensee shall input the requisite information on the Inventory Tracking System-generated transport manifest for the final destination Licensee or Pesticide Manufacturer who will be receiving the Medical Marijuana.

ii. When a Retail Marijuana Business utilizes a Retail Marijuana Transporter for transporting its Retail Marijuana the originating Licensee shall input the requisite information on the Inventory Tracking System-generated transport manifest for the final destination Licensee or Pesticide Manufacturer who will be receiving the Retail Marijuana.

iii. A Medical Marijuana Transporter or Retail Marijuana Transporter is prohibited from being listed as the final destination Licensee.

iv. A Medical Marijuana Transporter or Retail Marijuana Transporter shall not alter the information of the final destination Licensee or Pesticide Manufacturer after the information has been entered on the Inventory Tracking System-generated transport manifest by the Licensee.

v. If the Medical Marijuana Transporter or Retail Marijuana Transporter is not delivering the originating Licensee's Regulated Marijuana directly to the final destination Licensee or Pesticide Manufacturer, the Medical Marijuana Transporter or Retail Marijuana Transporter shall communicate to the originating Licensee which of the Medical Marijuana Transporter's or Retail Marijuana Transporter's Licensed Premises or off-

premises storage facilities will receive and temporarily store the Regulated Marijuana. The originating Licensee shall input the Medical Marijuana Transporter's or Retail Marijuana Transporter's location address and license number on the Inventory Tracking System-generated transport manifest.

c. Medical Marijuana Vegetative Plants and Retail Marijuana Vegetative Plants.

i. Licensees who transport Medical Marijuana Vegetative or Retail Marijuana Vegetative plants shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the originating Licensed Premises to be transported to the destination Licensed Premises due to a change of location approved by the Division pursuant to Rule 2-255, or a one-time Transfer pursuant to Rule 3-805.

ii. Retail Marijuana Transporters are permitted to transport Retail Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule 2-255, or a one-time Transfer pursuant to Rule 3-805. The Retail Marijuana Transporter shall transport the Retail Marijuana Vegetative Plants directly from the originating Licensed Premises to the final destination Licensed Premises.

iii. Medical Marijuana Transporters are permitted to transport Medical Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule 2-255, or a one-time Transfer pursuant to Rule 3-805. The Medical Marijuana Transporter shall transport the Medical Marijuana Vegetative plants directly from the originating Licensed Premises to the final destination Licensed Premises.

2. Copy of Transport Manifest to Recipient. A Licensee shall provide a copy of the transport manifest to each Regulated Marijuana Business, or Pesticide Manufacturer receiving the inventory described in the transport manifest. In order to maintain transaction confidentiality, the originating Licensee may prepare a separate Inventory Tracking System-generated transport manifest for each recipient Regulated Marijuana Business or Pesticide Manufacturer.

3. The Inventory Tracking System-generated transport manifest shall include the following:

a. Departure date and approximate time of departure;

b. Name, location address, and license number of the originating Regulated Marijuana Business;

c. Name, location address, and license number of the destination Regulated Marijuana Business(es) or name and location address of the destination Pesticide Manufacturer;

d. Name, location address, and license number of the Medical Marijuana Transporter or Retail Marijuana Transporter if applicable pursuant to Rule 3-605(H)(1)(b)(iv).

e. Product name and quantities (by weight and unit) of each product to be delivered to each specific destination location(s);

f. Arrival date and estimated time of arrival;

g. Transport vehicle make and model and license plate number; and

h. Name, Employee or Owner License number, and signature of the Licensee accompanying the transport.

I. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Regulated Marijuana Business shall be responsible for all the procedures associated with the tracking of inventory that is transported between Licensed Premises. *See* Rule 3-905 – Business Records Required.

1. Responsibilities of Originating Licensee.

a. Regulated Marijuana. Prior to departure, the originating Regulated Marijuana Business shall adjust its records to reflect the removal of Regulated Marijuana. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

b. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants. Prior to departure, the originating Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility shall adjust its records to reflect the removal of Medical Marijuana Vegetative plants and Medical Marijuana Immature plants, or Retail Marijuana Vegetative plants and Retail Marijuana Immature plants. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

2. Responsibilities of Recipient Licensee.

a. Regulated Marijuana. Upon receipt, the receiving Licensee shall ensure that the Regulated Marijuana received are as described in the transport manifest and shall immediately adjust its records to reflect the receipt of inventory. The scale used to weigh product being received shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the inventory records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest. Medical Marijuana Transporters and Retail Marijuana Transporters shall comply with all requirements of this subparagraph (I)(2)(a) except that they are not required to weigh Regulated Marijuana.

i. When a Regulated Marijuana Business transfers Regulated Marijuana to a Pesticide Manufacturer, the originating Licensee is responsible for confirming receipt of the Regulated Marijuana in the Inventory Tracking System.

b. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants. Upon receipt, the recipient Licensee shall ensure that the Regulated Marijuana Vegetative plants received are as described in the transport manifest, accounting for all RFID tags and each associated plant, and shall immediately adjust its records to reflect the receipt of inventory. Upon Receipt, the recipient

Licensee shall ensure that the Regulated Marijuana Immature plants received are as described in the transport manifest, accounting for all RFID tags and each receptacle containing Regulated Marijuana Immature plants, and shall immediately adjust its records to reflect the receipt of inventory.

i. When a Regulated Marijuana Business transfers Regulated Marijuana Immature plants to a Pesticide Manufacturer, the originating Licensee is responsible for confirming receipt of the Retail Marijuana Immature plants in the Inventory Tracking System.

3. Discrepancies.

a. Licensees. A recipient Licensee shall separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in the Inventory Tracking System and in any relevant business records.

b. Pesticide Manufacturers. In the event of a discrepancy between the quantity specified in a transport manifest and the quantity received by a Pesticide Manufacturer, the originating Licensee shall document the discrepancy in the Inventory Tracking System and in any relevant business records, and account for the discrepancy.

J. Adequate Care of Perishable Regulated Marijuana Product. A Regulated Marijuana Business must provide adequate refrigeration for perishable Regulated Marijuana Product during transport.

K. Failed Testing. In the event Regulated Marijuana has failed required testing, has been contaminated, or otherwise presents a risk of cross-contamination to other Regulated Marijuana, such Regulated Marijuana may only be transported if it is physically segregated and contained in a sealed package that prevents cross-contamination.

Basis and Purpose – 3-610

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-313(14), 44-10-505(2), 44-10-605(2), and 44-10-1001(2), C.R.S. The purpose of this rule is to establish that Regulated Marijuana may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage facility permit. This Rule 3-610 was previously Rules M and R 802, 1 CCR 212-1 and 1 CCR 212-2.

3-610 – Off-Premises Storage of Regulated Marijuana: All Regulated Marijuana Businesses

A. Off-Premises Storage Permit Authorized.

1. A Medical Marijuana Store, Medical Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility may only have one off-premises storage facility permit and may store Medical Marijuana in their Limited Access Area or in their one permitted off-premises storage facility. Medical Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.

2. A Retail Marijuana Store, Retail Marijuana Products Manufacturer, a Retail Marijuana Cultivation Facility, and a Retail Marijuana Testing Facility may only have one off-premises storage facility permit and may store Retail Marijuana in their Limited Access Area or in their one permitted off-premises storage facility. Retail Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.

3. An Accelerator Licensee may only have one off-premises storage facility permit and may store Retail Marijuana in their Limited Access Area of in their one permitted off-premises storage facility.

B. Permitting. To obtain a permit for an off-premises storage facility, a Regulated Marijuana Business must apply on current Division forms and pay any applicable fees.

1. A Medical Marijuana Transporter may only apply for and hold an off-premises storage permit in a local jurisdiction that permits the operation of Medical Marijuana Stores.

2. A Retail Marijuana Transporter may only apply for and hold an off-premises storage permit in a Local Jurisdiction that permits the operation of Retail Marijuana Stores.

C. Extension of Licensed Premises. A permitted off-premises storage facility is an extension of the Regulated Marijuana Business's Licensed Premises, subject to all applicable Regulated Marijuana regulations.

D. Limitation on Inventory to be Stored.

1. A Medical Marijuana Store, Medical Marijuana Products Manufacturer, and a Medical Marijuana Cultivation Facility possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Medical Marijuana that is part of the particular Medical Marijuana Business's finished goods inventory. The aforementioned Licensees may only share the premises with, and store inventory belonging to, a Medical Marijuana Business that has identical Controlling Beneficial Owners.

2. A Retail Marijuana Store, Retail Marijuana Products Manufacturer, and a Retail Marijuana Cultivation Facility possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Retail Marijuana that is part of the particular Retail Marijuana Business's finished goods inventory. The aforementioned Licensees may only share the premises with, and store inventory belonging to a Retail Marijuana Business that has identical Controlling Beneficial Owners.

3. A Medical Marijuana Business may share one off-premises storage facility with the same type of Retail Marijuana Business if the businesses operate a shared Licensed Premises pursuant to Rule 3-215 and if the Local Licensing Authority and Local Jurisdiction permit shared off-premises storage facilities. All Transfers of Regulated Marijuana by a Regulated Marijuana Business to or from its off-premises storage facility must be without consideration except for delivery orders packaged for delivery to patients or consumers pursuant to subparagraph E.

4. An Accelerator Licensee possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Retail Marijuana that is part of the Accelerator Licensee's finished goods inventory. The aforementioned Accelerator Licensees may only share the off-premises storage facility with, and store inventory belonging to, an Accelerator Licensee that has identical Controlling Beneficial Owners.

E. Privileges and Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Regulated Marijuana Business must not Transfer, cultivate, manufacture, process, test, research, or consume any Regulated Marijuana within the premises of the permitted off-premises storage facility. An off-premises storage facility shall not be used as a distribution center for Transfers to Regulated Marijuana Businesses without identical Controlling Beneficial Owners or for consideration.

1. A Medical Marijuana Store or Retail Marijuana Store with a valid delivery permit may use its own off-premises storage facility to package, label, and fill orders for delivery of Regulated Marijuana to a patient or consumer after the Medical Marijuana Store or Retail Marijuana Store receives an order for delivery, unless otherwise restricted by the local jurisdiction.

2. A Medical Marijuana Transporter or Retail Marijuana Transporter shall not use its own off-premises storage facility to package, label, or fill orders for delivery of Regulated Marijuana to a patient or customer. A Medical Marijuana Transporter or a Retail Marijuana Transporter may use its own off-premises storage facility to store Regulated Marijuana that is packaged and labeled for delivery to a patient or consumer, unless otherwise restricted by the Local Licensing Authority or Local Jurisdiction.

F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Regulated Marijuana Business's license must be displayed in a prominent place within the permitted off-premises storage facility.

G. Local Licensing Authority or Local Jurisdiction Approval.

1. Prior to submitting an application for an off-premises storage facility permit, the Regulated Marijuana Business must obtain approval or acknowledgement from the relevant Local Licensing Authority or Local Jurisdiction.

2. A copy of the relevant Local Licensing Authority's or Local Jurisdiction's approval or acknowledgement must be submitted by the Regulated Marijuana Business in conjunction with its application for an off-premises storage facility.

3. No Regulated Marijuana may be stored within a permitted storage facility until the relevant Local Licensing Authority or Local Jurisdiction has been provided a copy of the off-premises storage facility permit.

4. Any off-premises storage permit issued by the Division shall be conditioned upon the Regulated Marijuana Business's receipt of all required Local Jurisdiction approvals or acknowledgments.

H. Security in Storage Facility. A permitted off-premises storage facility must meet all video, security and lock requirements applicable to a Licensed Premises. *See* Rules 3-220 – Security Alarm and Lock Standards and Rule 3-225 – Video Surveillance.

I. Transport to and from a Permitted Off-Premises Storage Facility. A Licensee must comply with the provisions of Rule 3-605 – Transport: All Regulated Marijuana Businesses, when transporting any Regulated Marijuana to and from a permitted off-premises storage facility.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Regulated Marijuana Business shall utilize the Inventory Tracking System to track its inventories from the point of Transfer to or from a permitted off-premises storage facility. *See* Rules 3-805 – All Regulated Marijuana Businesses: Inventory Tracking System and Rule 3-905 – Business Records Required.

K. Inventory Tracking System Access and Scale. Every permitted off-premises storage facility must have an Inventory Tracking System terminal and a scale tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S.

L. Adequate Care of Perishable Regulated Marijuana Product. A Regulated Marijuana Business must provide adequate refrigeration for perishable Regulated Marijuana Product and shall utilize adequate storage facilities and transport methods.

M. Consumption Prohibited. A Regulated Marijuana Business shall not permit the consumption of marijuana or marijuana product on the premises of its permitted off-premises storage facility.

Basis and Purpose – 3-615

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(2)(dd), C.R.S. The purpose of this rule is to provide requirements for a Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter or Retail Marijuana Transporter to apply for and conduct deliveries to private residences pursuant to a delivery permit. This rule provides application and renewal requirements for a delivery permit. Additionally, the rule describes requirements for responsible vendor training, requirements for use of the inventory tracking system, Delivery Motor Vehicles requirements including security, requirements for delivery orders, requirements prior to completing a delivery to a patient or consumer at a private residence and requirements for maintaining the confidentiality of all patient and customer information.

3-615 – Regulated Marijuana Delivery Permits

A. Application, Qualification, and Eligibility for Delivery Permit.

1. Beginning January 2, 2020, a Medical Marijuana Store may apply for a delivery permit. The application shall be made on Division forms and in accordance with the 2-200 Series Rules. The delivery permit application can be submitted simultaneously with a Medical Marijuana Store initial or renewal application or it can be separate from a Medical Marijuana Store application but the application must identify the Medical Marijuana Store(s) seeking to obtain the delivery permit.

2. Beginning January 2, 2021, a Retail Marijuana Store, a Medical Marijuana Transporter, and a Retail Marijuana Transporter may apply for a delivery permit. The delivery permit application can be submitted simultaneously with a Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter initial or renewal application or it can be separate from a Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter application but the application must identify the Retail Marijuana Store(s), Medical Marijuana Transporter(s), or Retail Marijuana Transporter(s) seeking to obtain the delivery permit.

3. Prior to the State Licensing Authority issuing an Applicant a delivery permit, the Applicant must establish the Local Licensing Authority and/or Local Jurisdiction where the Applicant is located, or for a Medical Marijuana Transporter or Retail Marijuana Transporter without a Licensed Premise, the Local Licensing Authority or Local Jurisdiction for the location where they intend to operate:

    a. By ordinance or resolution has permitted delivery of Regulated Marijuana in the jurisdiction, and

    b. Is currently accepting applications for delivery permits in the jurisdiction, if required.

4. Multiple Medical Marijuana Stores, Retail Marijuana Stores, Medical Marijuana Transporters, or Retail Marijuana Transporters with identical Controlling Beneficial Owners that are in the same local jurisdiction may obtain one delivery permit that allows all Medical Marijuana Stores, all Retail Marijuana Stores, all Medical Marijuana

Transporters, or all Retail Marijuana Transporters in that jurisdiction to make deliveries to patients or consumers.

5. Delivery Permit Renewal.

a. A delivery permit must be renewed annually with the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter license it accompanies. A Medical Marijuana Store or Retail Marijuana Store must disclose to the Division any online platform provider that the Licensee has utilized during the previous year at the time of renewal.

b. Length of Delivery Permit.

i. A delivery permit issued with an initial or renewal license application is valid for one year and will expire at the same time as the license for the associated Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter.

ii. A delivery permit that is not issued with an initial or renewal application will be valid for less than one year to align the license expiration date of the related Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter. In all years after the first year, such a delivery permit will be valid for one year.

c. In addition to any other basis for denial of renewal application, the State Licensing Authority may also consider the following facts and circumstances as an additional basis for denial of a delivery permit renewal application:

i. The Medical Marijuana Store or Retail Marijuana Store failed to collect the one-dollar surcharge on every delivery or failed to timely remit the one-dollar surcharge to the municipality where the Medical Marijuana Store or Retail Marijuana Store is located, or to the county if the Medical Marijuana Store or Retail Marijuana Store is in an unincorporated area.

B. Delivery to Private Residence. Private residence includes, but is not limited to, a private premises where a person lives such as a private dwelling, place of habitation, a house, a multi-dwelling unit for residential occupants, or an apartment unit. Private residence does not include any premises located at a school, on the campus of an institution of higher education, public property, or any commercial property unit such as offices or retail space.

C. Responsible Vendor Certification Required. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter must obtain a valid responsible vendor designation pursuant to section 44-10-1202, C.R.S., and the 3-500 Series Rules including the delivery curriculum prior to conducting its first delivery.

D. Inventory Tracking System Required. A Regulated Marijuana Business possessing a valid delivery permit must use the inventory tracking system and transport manifests to track all Regulated Marijuana delivered to the intended patient or consumer. This includes the use of a transport manifest.

E. Delivery Motor Vehicle Requirements.

1. Any Delivery Motor Vehicle must be owned or leased by the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, Retail Marijuana Transporter, or

an Owner Licensee of the Regulated Marijuana Business that holds the delivery permit, must be registered in the State of Colorado, and must be insured.

2. Any Delivery Motor Vehicle must have a vehicle tracking system that is capable of real-time tracking and recording of the route taken by the Delivery Motor Vehicle while conducting deliveries that can be accessed remotely in real-time by the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter. The vehicle tracking system may be an application installed on a mobile device. The real-time location of the Delivery Motor Vehicle shall not be displayed to any patients or consumers.

3. Any Delivery Motor Vehicle must not have any external markings, words, or symbols that indicate the Delivery Motor Vehicle is used for delivery of Regulated Marijuana or is owned or leased by a Medical Marijuana Business or a Retail Marijuana Business.

4. Regulated Marijuana must not be visible from outside the Delivery Motor Vehicle.

5. Delivery Motor Vehicle security requirements include but are not limited to:

   a. A security alarm system, and

   b. A secure, locked, opaque storage compartment that is securely affixed to the Delivery Motor Vehicle for the purpose of securing Regulated Marijuana.

6. Video Surveillance Requirements.

   a. The Delivery Motor Vehicle must be equipped with video surveillance equipment that digitally records during all deliveries. The video surveillance shall record at least the secured, locked, opaque storage compartment containing the Regulated Marijuana and the front view of the Delivery Motor Vehicle (e.g. dash camera).

   b. Video surveillance shall be kept for a minimum of 40 days, must be capable of being embedded with the date and time, must be reproducible upon request from law enforcement, the Division, a Local Licensing Authority or a Local Jurisdiction and must be archived in a format that ensures authentication and guarantees no alteration of the video.

7. An enclosed Delivery Motor Vehicle shall not contain more than $10,000.00 in retail value of Regulated Marijuana. A Delivery Motor Vehicle that is not enclosed shall not contain more than $2,000.00 in retail value of Regulated Marijuana.

8. A Delivery Motor Vehicle must not leave the State of Colorado while any amount of Regulated Marijuana is in the Delivery Motor Vehicle.

9. Only persons licensed by the State Licensing Authority and identified on the transport manifest may occupy a Delivery Motor Vehicle while conducting deliveries of Regulated Marijuana.

F. Delivery Order Requirements.

1. A Medical Marijuana Store or a Retail Marijuana Store that has a valid delivery permit may accept orders for delivery of Regulated Marijuana to patients who are at least 21 years of age, parents or guardians of patient under 18 years of age, or consumers who

are at least 21 years of age at a private residence. Delivery orders to patients ages 18 to 20 are not permitted.

2. For a Medical Marijuana Store or a Retail Marijuana Store that utilizes an online platform provider:

   a. The online platform provider must require that the patient or consumer choose a Medical Marijuana Store or Retail Marijuana Store before displaying the price of Regulated Marijuana to the patient or consumer; and

   b. The Medical Marijuana Store or Retail Marijuana Store must receive verification that there has not already been a delivery of Regulated Marijuana to that private residence through the online platform provider that same business day.

3. All delivery orders must document the following information which must be maintained pursuant to Rule 3-905 by the Medical Marijuana Store or the Retail Marijuana Store:

   a. The name and date of birth of the patient or consumer placing the delivery order;

   b. The address of the private residence where the order will be delivered;

   c. For Medical Marijuana delivery orders only, the registration number reflecting on the patient's registry identification card; and

   d. For Medical Marijuana delivery orders only, if the patient is under 18 years of age, the parent or guardian designated as the patient's primary caregiver, and if applicable, the registration number of the primary caregiver.

4. A Medical Marijuana Store or a Retail Marijuana Store may accept payment for delivery orders using any legal method of payment, gift card pre-payments or payment on delivery, or pre-payment accounts established with a Medical Marijuana Store or Retail Marijuana Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted. A Medical Marijuana Transporter or Retail Marijuana Transporter may accept payment on behalf of a Medical Marijuana Store or Retail Marijuana Store at the point of Transfer to the patient or consumer.

   a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

5. Regulated Marijuana must be weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Medical Marijuana Store or Retail Marijuana Store or at their off-premises storage facility after receipt of a delivery order. Regulated Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Regulated Marijuana has been packaged and labeled for delivery to the patient or consumer as required by the 3-1000 Series Rules.

6. Medical Marijuana Transporters and Retail Marijuana Transporters shall not take delivery orders but may deliver Regulated Marijuana on behalf of Medical Marijuana Stores and Retail Marijuana Stores pursuant to a contract with the Medical Marijuana Store or Retail Marijuana Store provided that the store also holds a valid delivery permit. The Medical Marijuana Store and Medical Marijuana Transporter must maintain copies of all contracts for delivery pursuant to Rule 3-905. The Retail Marijuana Store and Retail Marijuana Transporter must maintain copies of all contracts for delivery pursuant to Rule 3-905.

G. Regulated Marijuana Delivery Requirements.

1. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter shall not deliver Regulated Marijuana to patients, parents, guardians, or consumers while also transporting Regulated Marijuana between Licensed Premises in the same Delivery Motor Vehicle.

2. Delivery of Medical Marijuana and Retail Marijuana.

   a. A Medical Marijuana Store and Retail Marijuana Store, both of which hold a valid delivery permit, and which have identical Controlling Beneficial Owners, may complete deliveries of Medical Marijuana and Retail Marijuana using the same Delivery Motor Vehicle and without returning to the Medical Marijuana Store or Retail Marijuana Store between deliveries.

   b. A Medical Marijuana Transporter and Retail Marijuana Transporter, both of which hold a valid delivery permit, and which have identical Controlling Beneficial Owners may complete deliveries of Medical Marijuana and Retail Marijuana using the same Delivery Motor Vehicle and without returning to the Medical Marijuana Store or Retail Marijuana Store between deliveries.

   c. A Medical Marijuana Transporter holding a valid delivery permit may make deliveries for multiple Medical Marijuana Stores that also hold valid delivery permits using the same Delivery Motor Vehicle and without returning to a Medical Marijuana Store between deliveries.

   d. A Retail Marijuana Transporter holding a valid delivery permit may make deliveries for multiple Retail Marijuana Stores that also hold valid delivery permits using the same Delivery Motor Vehicle and without returning to a Retail Marijuana Store between deliveries.

3. An Owner Licensee or Employee Licensee delivering Regulated Marijuana shall not open any Container of Regulated Marijuana in the Delivery Motor Vehicle and is prohibited from packaging or re-packaging Regulated Marijuana once the Delivery Motor Vehicle has departed from the Licensed Premises of a Medical Marijuana Store or Retail Marijuana Store.

4. A Medical Marijuana Store or Retail Marijuana Store shall not accept delivery orders for Regulated Marijuana Product that is perishable unless the Delivery Motor Vehicle that will make the delivery has the ability to secure the Regulated Marijuana Product in climate-controlled storage.

5. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter must maintain a transport manifest that documents the following:

   a. The time of delivery;

   b. The name, and identification number of the valid, acceptable identification (e.g. driver's license) presented by the patient or consumer;

   c. Address of the private residence;

   d. Acknowledgement of receipt of delivery by the person receiving the delivery;

e. If applicable, patient registry number;

f. If applicable, primary caregiver registry number of the patient's parent or guardian; and

g. For every Regulated Marijuana delivery that could not be completed, the reason the delivery could not be completed.

6. Proof of Patient Medical Registry and Identification.

a. Prior to Transferring possession of the order, the Owner Licensee or Employee Licensee delivering Medical Marijuana to a patient or a patient's parent or guardian must:

i. Inspect the patient's or parent's or guardian's identification and registry identification card;

ii. Verify the possession of a valid registry identification card;

iii. Verify that the information provided at the time of order match the name and age on the patient's or parent or guardian's identification; and

iv. Verify that the identification and registry identification card belong to the person receiving the delivery.

b. The Owner Licensee or Employee Licensee must refuse delivery of Medical Marijuana if the person attempting to accept the delivery order cannot establish all of the requirements of subparagraph (G)(6)(a)(i) through (iv) above.

7. Proof of Consumer Identification.

a. The Owner Licensee or Employee Licensee delivering Retail Marijuana to a consumer must first verify that the natural person accepting the delivery has an acceptable form of identification demonstrating the person is at least 21 years of age and that the person is the same as the person that placed the order for delivery with the Retail Marijuana Store.

b. The Owner Licensee or Employee Licensee must refuse delivery of Retail Marijuana if the natural person attempting to accept the delivery order cannot establish all the requirements of subparagraph (G)(7)(a) above.

8. Daily Delivery Limits.

a. A Medical Marijuana Store or Medical Marijuana Transporter must not deliver individually or in any combination, more than two ounces of Medical Marijuana, eight (8) grams of Medical Marijuana Concentrate, or Medical Marijuana Products containing more than 20,000 milligrams of THC to a patient in a single business day.

b. A Medical Marijuana Store or Medical Marijuana Transporter must not deliver to a patient, parent, or guardian or private residence where the Licensee knows or reasonably should know that the patient, parent or guardian, or private residence has already received a delivery during that same business day. This does not prohibit delivery to more than one patient at the Same time and private residence.

c. A Retail Marijuana Store or Retail Marijuana Transporter must not deliver individually or in any combination, more than one ounce of Retail Marijuana, 8 grams of Retail Marijuana Concentrate, or Retail Marijuana Products containing more than ten 80 milligram servings of THC to a customer in a single business day.

d. A Retail Marijuana Store or Retail Marijuana Transporter must not deliver to a consumer or private residence where the Licensee knows or reasonably should know that the consumer or private residence has already received a delivery during that same business day. This does not prohibit delivery to more than one consumer at the same time and private residence.

9. An Owner Licensee or Employee Licensee who cannot complete a delivery order for any reason must return the Regulated Marijuana to the Medical Marijuana Store, Retail Marijuana Store, or off-premises storage facility from which the delivery order originated. If the Container is unopened and has not been tampered with, the Medical Marijuana Store, Retail Marijuana Store, or off-premises storage facility may return the Regulated Marijuana into its inventory and reconcile it with the Inventory Tracking System by the close of business that same day. Otherwise, the Regulated Marijuana must be destroyed in accordance with this Rule and Rule 3-235.

H. Confidentiality of Patient and Consumer Personal Identifying Information. A Medical Marijuana Store, a Retail Marijuana Store, a Medical Marijuana Transporter, a Retail Marijuana Transporter, and their respective Owner Licensees and Employee Licensees must keep all personal identifying information and any health care information obtained from patients and consumers confidential and must not disclose such personally identifiable information and any health care information to any person other than those who need that information to take, process, or deliver the order or otherwise as required by the Marijuana Code, or Title 18, or Title 25 of the Colorado Revised Statutes.

3-700 Series – Signage and Advertising

Basis and Purpose – 3-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clearly delineate that a Regulated Marijuana Business is not permitted to make deceptive, false, or misleading statements in Advertising materials or on any product or document provided to a patient or consumer. This Rule 3-705 was previously Rules M and R 1102, 1 CCR 212-1 and 1 CCR 212-2.

3-705 – Advertising General Requirements

A. No Deceptive, False, or Misleading Statements. A Regulated Marijuana Business shall not engage in Advertising that is deceptive, false, or misleading. A Regulated Marijuana Business shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a patient or consumer.

B. Potential Risks of Regulated Marijuana Concentrate Overconsumption. A Regulated Marijuana Business Advertising Medical Marijuana Concentrate or Retail Marijuana Concentrate shall include a notice as determined by the Division to patients or consumers regarding the potential risks of Medical Marijuana Concentrate or Retail Marijuana Concentrate overconsumption.

Basis and Purpose – 3-710

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists throughout Article XVIII, Section 16 of the Colorado Constitution. The purpose of this rule is to clarify the definition of the term "minor" as used in the Marijuana Code and these rules. This Rule 3-710 was previously Rules M and R 1103, 1 CCR 212-1 and 1 CCR 212-2.

3-710 – The Term "Minor" as Used in the Marijuana Code and These Rules

The term "minor" as used in the Marijuana Code and these rules means an individual under the age of 18 for Medical Marijuana and under the age of 21 for Retail Marijuana.

Basis and Purpose – 3-715

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(a), and 44-10-103(10), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising and Branding.

3-715 – Use of Branding

A. For the purposes of these 3-700 Series Rules, the term Branding includes taglines, which may or may not be trademarked.

B. Branding may not be used to target individuals under the age of 21.

Basis and Purpose – 3-720

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-720 was previously Rules M and R 1104, 1105, 1106, and 1107, 1 CCR 212-1 and 1 CCR 212-2.

3-720 – Advertising: All Media

A. Medical Marijuana Businesses. A Medical Marijuana Business may Advertise in television, radio, a print publication, or via the internet only where at least 71.6 percent of the audience is reasonably expected to be at least the age of 21. A Medical Marijuana Business is prohibited from specifically directing Advertising and marketing to persons under 21 years of age.

B. Retail Marijuana Businesses. A Retail Marijuana Business may Advertise in television, radio, a print publication or via the internet only where at least 71.6 percent of the audience is reasonably expected to be at least the age of 21.

C. Advertising for all Marijuana Businesses. Advertising proposes a commercial transaction or otherwise constitutes commercial speech. Advertising includes marketing.

Basis and Purpose – 3-725

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety and health and benefit claims that are by nature misleading, deceptive, or false.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-725 was previously Rules M and R 1109, 1 CCR 212-1 and 1 CCR 212-2.

3-725 – Signage and Advertising: No Safety Claims Because Regulated by State Licensing Authority

No Regulated Marijuana Business may engage in Advertising or utilize signage that asserts its products are safe because they are regulated by the State Licensing Authority.

Basis and Purpose – 3-730

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c) and 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety claims that are by nature misleading, deceptive, or false. This Rule 3-730 was previously Rules M and R 1110, 1 CCR 212-1 and 1 CCR 212-2.

3-730 – Signage and Advertising: No Safety Claims Because Tested

A Regulated Marijuana Business shall not engage in Advertising or utilize signage that asserts its products are safe because they are tested by a Regulated Marijuana Testing Facility.

Basis and Purpose – 3-735

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to outdoor Advertising and signage.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-735 was previously Rules M and R 1111, 1 CCR 212-1 and 1 CCR 212-2.

3-735 – Signage and Advertising: Outdoor Advertising

A. Local Ordinances. In addition to any requirements within these rules, a Regulated Marijuana Business shall comply with any applicable local ordinances regulating signs and Advertising.

B. All Applicable State Laws Apply. A Regulated Marijuana Business that engages in any Advertising shall comply with all applicable state laws, including but not limited to the Outdoor Advertising Act at sections 43-1-401 through 43-1-420, C.R.S.

C. A Regulated Marijuana Business shall not Advertise on any outdoor sign that is within 500 feet of established and conspicuously identified elementary or secondary schools, places of worship, or public playgrounds.

Basis and Purpose – 3-740

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to prohibit signage and Advertising that has a high likelihood of reaching individuals under the age of 21.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-740 was previously Rules M and R 1112, 1 CCR 212-1 and 1 CCR 212-2.

3-740 – Signage and Advertising: No Content That Targets Minors

A. A Medical Marijuana Business shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.

B. A Retail Marijuana Business shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.

Basis and Purpose – 3-745

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to marketing directed toward location-based devices.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-745 was previously Rules M and R 1113, 1 CCR 212-1 and 1 CCR 212-2.

3-745 – Advertising: Advertising via Marketing Directed Toward Location-Based Devices

A Regulated Marijuana Business shall not engage in Advertising via marketing directed towards location-based devices, including, but not limited to, cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older for Medical Marijuana, 21 years of age or older for Retail Marijuana, and includes a permanent and easy opt-out feature.

Basis and Purpose – 3-750

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to pop-up Advertising.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana

product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-750 was previously Rules M and R 1114, 1 CCR 212-1 and 1 CCR 212-2.

3-750 – Pop-Up Advertising

A Regulated Marijuana Business shall not utilize unsolicited pop-up Advertising on the internet.

Basis and Purpose – 3-755

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to event sponsorship.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-755 was previously Rules M and R 1115, 1 CCR 212-1 and 1 CCR 212-2.

3-755 – Advertising: Event Sponsorship

A. A Medical Marijuana Business may sponsor a charitable, sports, or similar event, but a Medical Marijuana Business shall not engage in Advertising at, or in connection with, such an event unless the Medical Marijuana Business has reliable evidence that 71.6 percent of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be at least the age of 21.

B. A Retail Marijuana Business may sponsor a charitable, sports, or similar event, but a Retail Marijuana Business shall not engage in Advertising at, or in connection with, such an event unless the Retail Marijuana Business has reliable evidence that 71.6 percent of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be at least the age of 21.

3-800 Series – Inventory Tracking Requirements

Basis and Purpose – 3-805

The statutory authority for this rule includes but is not limited to sections, 44-10-201(1), 44-10-202(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-501(1)(b), 44-10-502(2), 44-10-503(1)(b), 44-10-505(3), 44-10-601(1)(d), 44-10-602(3), 44-10-603(1)(b), 44-10-605(3), and 44-10-610(3)(a), C.R.S.

The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Regulated Marijuana from either seed or immature plant stage until the Regulated Marijuana is sold to a patient or consumer, or destroyed.

The Inventory Tracking System is a web-based tool coupled with RFID technology that allows both the Inventory Tracking System User and the State Licensing Authority the ability to identify and account for all Regulated Marijuana. Through the use of RFID technology, a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility will tag either the seed or immature plant with an individualized number, which will follow the Regulated Marijuana through all phases of production and final sale to a patient or consumer. This will allow the State Licensing Authority and the Inventory Tracking System User the ability to monitor and track Regulated Marijuana inventory. The Inventory Tracking System will also provide a platform for the State Licensing Authority to exchange information and provide compliance notifications to the industry.

The State Licensing Authority finds it essential to regulate, monitor, and track all Regulated Marijuana to eliminate diversion, inside and outside of the state, and to ensure that all marijuana grown, processed, sold, and disposed of in the Regulated Marijuana market is transparently accounted for.

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate the Inventory Tracking System to promote an effective means for this industry to account for and monitor its Regulated Marijuana inventory. This Rule 3-805 was previously Rules M and R 309, 1 CCR 212-1 and 1 CCR 212-2.

3-805 – Regulated Marijuana Businesses: Inventory Tracking System

A. Inventory Tracking System Required. A Regulated Marijuana Business is required to use the Inventory Tracking System as the primary inventory tracking system of record. A Regulated Marijuana Business must have an Inventory Tracking System account activated and functional prior to operating or exercising any privileges of a License. Medical Marijuana Businesses converting to or adding a Retail Marijuana Business must follow the inventory transfer guidelines detailed in Rule 3-805(C) below. Because Marijuana Hospitality Businesses are not authorized to receive or conduct Transfers of Regulated Marijuana, this Rule does not apply to Marijuana Hospitality Businesses.

B. Inventory Tracking System Access - Inventory Tracking System Administrator.

1. Inventory Tracking System Administrator Required. A Regulated Marijuana Business must have at least one Owner Licensee who is an Inventory Tracking System Administrator. A Regulated Marijuana Business may also designate additional Owner Licensees and Employee Licensees to obtain Inventory Tracking System Administrator accounts.

2. Training for Inventory Tracking System Administrator Account. In order to obtain an Inventory Tracking System Administrator account, a Person must attend and successfully complete all required Inventory Tracking System training. The Division may also require additional ongoing, continuing education for an individual to retain his or her Inventory Tracking System Administrator account.

3. Inventory Tracking System Access - Inventory Tracking System User Accounts. A Regulated Marijuana Business may designate licensed Owners and employees who hold valid Employee Licenses as Inventory Tracking System Users. A Regulated Marijuana Business shall ensure that all Owner Licensees and Employee Licensees who are granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the system are trained by Inventory Tracking System Administrators in the proper and lawful use of Inventory Tracking System.

C. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Retail Marijuana Business.

1. Medical Marijuana Inventory Transfer to Retail Marijuana Business.

a. Except pursuant to Rules 5-205 and 6-205:

i. The only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Business is Medical Marijuana and Medical Marijuana Concentrate that was produced at the Medical Marijuana Cultivation Facility, from the Medical Marijuana Cultivation Facility to a Retail Marijuana Cultivation Facility.

ii. Each Medical Marijuana Cultivation Facility that is either converting to or adding a Retail Marijuana Cultivation Facility license must create a Retail Marijuana Inventory Tracking System account for each license it is converting or adding.

iii. A Medical Marijuana Cultivation Facility must Transfer all relevant Medical Marijuana and Medical Marijuana Concentrate into the Retail Marijuana Cultivation Facility's Inventory Tracking System account and affirmatively declare those items as Retail Marijuana or Retail Marijuana Concentrate as appropriate.

iv. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Business.

v. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Store or Medical Marijuana Products Manufacturer to any Retail Marijuana Business.

2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further Transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.

D. RFID Tags Required.

1. Authorized Tags Required and Costs. Licensees are required to use RFID tags issued by a Division-approved vendor that is authorized to provide RFID tags for the Inventory Tracking System. Each licensee is responsible for the cost of all RFID tags and any associated vendor fees.

2. Use of RFID Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where the Inventory Tracking System requires RFID tag use. A Regulated Marijuana Business must ensure it has an adequate supply of RFID tags to properly tag Regulated Marijuana as required by the Inventory Tracking System. An RFID tag must be physically attached to every Regulated Marijuana plant being cultivated that is greater than eight inches tall or eight inches wide. Prior to a plant reaching a viable point to support the weight of the RFID tag and attachment strap, the RFID tag may be securely fastened to the stalk. An RFID tag must be assigned to all Regulated Marijuana. *See* Rule 3-805(D); Rule 3-1005(G) – Shipping Containers.

3. Reuse of RFID Tags Prohibited. A Licensee shall not reuse any RFID tag that has already been affixed or assigned to any Regulated Marijuana.

4. When plants reach a viable point to support the weight of the RFID tag and attachment strap, the RFID tag shall be securely fastened to a lower supporting branch.

E. General Inventory Tracking System Use.

1. Reconciliation with Inventory. All inventory tracking activities at a Regulated Marijuana Business must be tracked through use of the Inventory Tracking System. A Licensee must reconcile all on-premises and in-transit Regulated Marijuana inventories each day in the Inventory Tracking System at the close of business.

2. Common Weights and Measures.

a. A Regulated Marijuana Business must utilize a standard of measurement that is supported by the Inventory Tracking System to track all Regulated Marijuana.

b. A scale used to weigh product prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S.

3. Inventory Tracking System Administrator and User Accounts – Security and Record.

a. A Regulated Marijuana Business shall maintain an accurate and complete list of all Inventory Tracking System Administrators and Inventory Tracking System Users for each Licensed Premises. A Regulated Marijuana Business shall update this list when a new Inventory Tracking System User is trained. A Regulated Marijuana Business must train and authorize any new Inventory Tracking System Users before those Owners or employees may access Inventory Tracking System or input, modify, or delete any information in the Inventory Tracking System.

b. A Regulated Marijuana Business must cancel any Inventory Tracking System Administrators and Inventory Tracking System Users from their associated Inventory Tracking System accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.

c. A Regulated Marijuana Business is accountable for all actions employees take while logged into the Inventory Tracking System or otherwise conducting Regulated Marijuana inventory tracking activities.

d. Each individual user is also accountable for all of his or her actions while logged into the Inventory Tracking System or otherwise conducting Regulated Marijuana inventory tracking activities, and shall maintain compliance with all relevant laws.

4. Secondary Software Systems Allowed.

a. Nothing in this Rule prohibits a Regulated Marijuana Business from using separate software applications to collect information to be used by the business including secondary inventory tracking or point-of-sale systems.

b. A Licensee must ensure that all relevant Inventory Tracking System data is accurately transferred to and from the Inventory Tracking System for the purposes of reconciliations with any secondary systems.

c. A Regulated Marijuana Business must preserve original Inventory Tracking System data when transferred to and from a secondary application(s). Secondary software applications must use the Inventory Tracking System data as the

primary source of data and must be compatible with updating to the Inventory Tracking System.

5. Regulated Marijuana Cultivations: Inventory Tracking System. A Manicure Batch may be combined with a Harvest Batch containing the same plants, provided that the Regulated Marijuana is homogenized prior to sampling and testing, uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals. Manicure and Harvest Batches must be clearly identified at the Licensed Premises with the Manicure Batch and Harvest Batch name and date as it appears in the Inventory Tracking System.

F. Conduct While Using Inventory Tracking System.

1. Misstatements or Omissions Prohibited. A Regulated Marijuana Business and its designated Inventory Tracking System Administrator(s) and Inventory Tracking System User(s) shall enter data into the Inventory Tracking System that fully and transparently accounts for all inventory tracking activities. Both the Regulated Marijuana Business and the individuals using the Inventory Tracking system are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.

2. Use of Another User's Login Prohibited. Individuals entering data into the Inventory Tracking System shall only use that individual's Inventory Tracking System account.

3. Loss of System Access. If at any point a Regulated Marijuana Business loses access to the Inventory Tracking System for any reason, the Regulated Marijuana Business must keep and maintain comprehensive records detailing all Regulated Marijuana tracking inventory activities that were conducted during the loss of access. *See* Rule 3-905 – Business Records Required. Once access is restored, all Regulated Marijuana inventory tracking activities that occurred during the loss of access must be entered into the Inventory Tracking System. A Regulated Marijuana Business must document when access to the system was lost and when it was restored. A Regulated Marijuana Business shall not Transfer any Regulated Marijuana to another Regulated Marijuana Business until such time as access is restored and all information is recorded into the Inventory Tracking System.

G. System Notifications.

1. Compliance Notifications. A Regulated Marijuana Business must monitor all compliance notifications from the Inventory Tracking System. The Licensee must resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in the Inventory Tracking System until the Regulated Marijuana Business resolves the compliance issues detailed in the notification.

2. Informational Notifications. A Regulated Marijuana Business must take appropriate action in response to informational notifications received through the Inventory Tracking System, including but not limited to notifications related to RFID billing, enforcement alerts, and other pertinent information.

H. Lawful Activity Required. Proper use of the Inventory Tracking System does not relieve a Licensee of its responsibility to maintain compliance with all laws, rules, and other requirements at all times.

I. Inventory Tracking System Procedures Must Be Followed. A Regulated Marijuana Business must utilize Inventory Tracking System in conformance with these rules and Inventory Tracking System procedures, including but not limited to:

1. Properly indicating the creation of a Harvest Batch and/or Production Batch including the assigned Harvest Batch and/or Production Batch Number;

2. Accurately identifying the cultivation rooms and location of each plant within those rooms on the Licensed Premises;

3. Accurately identifying when inventory is no longer on the Licensed Premises;

4. Properly indicating that a Test Batch is being used as part of achieving a Reduced Testing Allowance;

5. Accurately indicating the Inventory Tracking System category for all Regulated Marijuana; and

6. Accurately including a note explaining the reason for any destruction of Regulated Marijuana, and reason for any adjustment of weights to Inventory Tracking System packages.

7. Properly designating one or more Sampling Managers before Transferring any Sampling Units;

8. Fully and accurately tracking the Transfer of any Sampling Unit from a Regulated Marijuana Business to a Sampling Manager identified by name and license number; and

9. When entering into the Inventory Tracking System a unit of Regulated Marijuana the Inventory Tracking System Trained Administrator or Inventory Tracking System User shall also identify the net contents of each unit consistent with Rules 3-1005(B)(2)(e) and (C)(2)(a)(iv). For example, if the Inventory Tracking System User enters 1 unit of Retail Marijuana Product that contains 100 milligrams of Retail Marijuana Product, then the Inventory Tracking System User shall also identify that each unit contains 100 milligrams. Further, if the Inventory Tracking System User enters 1 unit of Medical Marijuana Product that contains 200 mg of Medical Marijuana Product, the Inventory Tracking System User shall also identify that each unit contains 200 mg.

Basis and Purpose – 3-810

The statutory authority for this rule includes but is not limited to sections, 44-10-201, 44-10-202(1)(a), 44-10-202(1)(c), 44-10-203(2)(n), 44-10-501(1)(b), 44-10-502(2), 44-10-503(1)(b), 44-10-505(3), 44-10-601(1)(d), 44-10-601(4), 44-10-602(1), 44-10-602(6)(f), 44-10-603(1)(b), and 44-10-605(3), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to maintain a system that will allow the State Licensing Authority and the industry to jointly track Regulated Marijuana from either seed or immature plant stage until the Regulated Marijuana is sold to the patient or consumer or destroyed.

3-810 – Minimum Tracking Requirements

A. Requirement to Track Regulated Marijuana From Seed-to-Sale.

1. Licensees must use the Inventory Tracking System to ensure Regulated Marijuana is identified and tracked from the point the Regulated Marijuana is Propagated from seed or cutting to the point when it is Transferred to another Regulated Marijuana Business, the Medical Marijuana Transporter or Retail Marijuana Transporter takes control of the Regulated Marijuana by removing it from the originating Licensee's Licensed Premises and placing the Regulated Marijuana in the transport vehicle, or it is Transferred to a Sampling Manager as a designated Sampling Unit, and through the delivery, point-of-

sale, or the Regulated Marijuana is otherwise disposed of. *See* Rule 3-805 – Inventory Tracking System.

2. Licensees must immediately input any Genetic Material that is received in accordance with Rules 5-305 and 6-305 into the Inventory Tracking System as an Immature Plant batch.

B. Ability to Reconcile Required. Licensees must have the ability to reconcile transported and on-hand Regulated Marijuana inventory with the Inventory Tracking System and the associated transaction history and transportation order receipts. *See* Rule 3-905 – Business Records Required.

C. Decontamination. Licensees must input any Decontamination method utilized into the Inventory Tracking System.

Basis and Purpose – 3-815

The statutory authority for this rule includes but is not limited to 44-10-201, 44-10-202(1)(a), 44-10-202(1)(c), 44-10-313(5)(b), 44-10-505(3), and 44-10-605(2) C.R.S. The purpose of this rule is to allow the State Licensing Authority and the industry to jointly track the Transfer and delivery of Regulated Marijuana and Regulated Marijuana Product between licensed Regulated Marijuana Businesses. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.

3-815 – Transport Manifest Required

A. Transport of Regulated Marijuana Without Transport Manifest Prohibited. Licensees are prohibited from transporting any Regulated Marijuana without a valid transport manifest generated by the Inventory Tracking System.

B. Accepting Regulated Marijuana Without Transport Manifest Prohibited. Licensees are prohibited from accepting any Regulated Marijuana from another Regulated Marijuana Business without receiving a valid transport manifest generated from the Inventory Tracking System.

C. Information Must Be Accurate. All information on the Inventory Tracking System generated transport manifest must be accurate.

Basis and Purpose – 3-820

The statutory authority for this rule includes but is not limited to sections 44-10-201, 44-10-202(1)(a), 44-10-202(1)(c), 44-10-502(3), 44-10-503(10), 44-10-602(6), and 44-10-603(10). The purpose of this rule is to establish inventory tracking, reporting and recordkeeping requirements for Sampling Units to ensure that any Regulated Marijuana or Regulated Marijuana Products designated as a Sampling Unit is identified and tracked from the point of such designation.

3-820 – Sampling Unit Tracking Requirements

A. Applicability. This Rule 3-820 applies to Medical Marijuana Cultivation Facilities, Retail Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, and Retail Marijuana Products Manufacturers.

B. Sampling Unit Tracking Requirements.

1. In addition to all other requirements set forth in these rules, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products

Manufacturer, or Retail Marijuana Products Manufacturer shall utilize the Inventory Tracking System to ensure that any Regulated Marijuana designated as a Sampling Unit is identified and tracked from the point of such designation until the Sampling Unit is Transferred to a Sampling Manager. *See* Rules 5-230, 5-320, 6-225, 6-320 – Sampling Unit Protocols.

2. The Inventory Tracking System must adequately reflect all Transfers of Sampling Units. At a minimum, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer must ensure that the Inventory Tracking System reflects the date the Sampling Unit was Transferred, the weight of the Sampling Unit, and the name and license number of the recipient Sampling Manager.

3. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer must have the ability to reconcile its Sampling Manager and Sampling Unit records with the Inventory Tracking System and any associated transaction history.

Basis and Purpose – 3-825

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-203(2)(d)(I), 44-10-504, and 44-10-604 The Purpose of this rule is to establish reporting standards for Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities.

3-825 – Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities Specific Tracking Requirements

A. Required Procedures. A Regulated Marijuana Testing Facility must establish procedures to ensure that results are accurate, precise, and scientifically valid prior to reporting such results.

B. Reports. Every final report, whether submitted to the Division, to a Regulated Marijuana Business, or to any other Person authorized to receive the report, must include the following:

1. Report quantitative results that are only above the lowest concentration of calibrator or standard used in the analytical run;

2. Verify results that are below the lowest concentration of calibrator or standard and above the LOQ by using a blank and a standard that falls below the expected value of the analyte in the sample in duplicate prior to reporting a quantitative result;

3. Qualitatively report results below the lowest concentration of calibrator or standard and above the LOD as either trace or using a non-specific numerical designation;

4. Adequately document the available external chain of custody information;

5. Ensure all final reports contain the name and location of the Regulated Marijuana Testing Facility that performed the test, name, and unique identifier of Sample, submitting client, Sample received date, date of report, type of Sample tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies; and

6. Provide the final report to the Division, as well as the Regulated Marijuana Business, and/or any other Person authorized to receive the report in a timely manner.

C. Inventory Tracking System. Each Regulated Marijuana Testing Facility shall:

1. Report all test results to the Division as part of daily reconciliation by the close of business and in accordance with all Inventory Tracking System Procedures under Rule 3-805 – All Regulated Marijuana Businesses: Inventory Tracking System. The requirement to report all test results includes:

   a. Both positive and negative test results;

   b. Results from both mandatory and voluntary testing; and

   c. For quantitative tests, a quantitative value.

2. As part of Inventory Tracking System reporting, when results of tested Samples exceed maximum levels of allowable potency or contamination, or otherwise result in failed potency, homogeneity, or contaminant testing, the Regulated Marijuana Testing Facility shall, in the Inventory Tracking System, indicate failed test results for the Inventory Tracking System package associated with the failed Sample. This requirement only applies to testing of Samples that are comprised of Regulated Marijuana.

3. Report all Transfers of Genetic Material to a Regulated Marijuana Cultivation Facility in the Inventory Tracking System.

D. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

3-900 Series – Business Records

Basis and Purpose – 3-905

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-301, and 44-10-1001(1), C.R.S. This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. This Rule 3-905 was previously Rules M and R 901, 1 CCR 212-1 and 1 CCR 212-2.

3-905 – Business Records Required

A. General Requirements.

1. A Regulated Marijuana Business must maintain the information required in this Rule in a format that is readily understood by a reasonably prudent business person and may be stored electronically.

2. Each Regulated Marijuana Business shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.

   a. On premises records: The Regulated Marijuana Business's books and records for the preceding six months (or complete copies of such records) must be maintained on the Licensed Premises at all times. Electronic records that are accessible from, but not physically located at, a Licensee's Licensed Premises may also satisfy the requirements of this Rule 3-905.

   b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.

3. Books and records necessary to fully account for the business transactions conducted under its License shall be made available to the State Licensing Authority or Division upon request.

B. The books and records must fully account for the transactions of the business and must include, but shall not be limited to:

1. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Regulated Marijuana Business must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.

2. Security Alarm Systems documents required by Rule 3-220(A)(3).

3. Advertising Records – All records related to Advertising and marketing, including, but not limited to, audience composition data.

4. Child Resistance Certificates – A copy of the certificate that each Container into which a Licensee places Regulated Marijuana is Child Resistant.

5. Diagram for the Licensed Premises – Diagram of all approved Limited Access Areas, Restricted Access Areas, and any permitted off-premises storage facilities.

6. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.

7. All records normally retained for tax purposes.

8. Waste Log and Fibrous Waste Records – Comprehensive records regarding all waste and Fibrous Waste material that accounts for, reconciles, and evidences all waste and Fibrous Waste activity related to the disposal of marijuana.

9. Consumer Waste Records – All contracts, standard operating procedures, and receipts relating to collection and Transfer of Marijuana Consumer Waste as required by Rule 3-240.

10. Surveillance Logs – Surveillance logs identify all authorized employees and service personnel who have access to the surveillance system and maintenance and activity log as required by Rule 3-225.

11. Every Licensee shall maintain a record of its identity statement and Standardized Graphic Symbol. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule.

12. Testing Records Required to be Maintained by Regulated Marijuana Testing Facilities:

    a. All testing records required by Rule 5-450 and Rule 6-450.

    b. Digital photographs of each Test Batch.

    c. Any delegation of responsibilities from the laboratory director to a qualified supervisory analyst as permitted by Rule 5-240(B)9 or 6-240(B).

13. Testing Records Required to be Maintained by Regulated Marijuana Businesses and Accelerator Licensees:

a. Documentation of Designated Test Batch Collector Training required by Rule 4-110(C)(3).

b. Records regarding wet whole plant that was not tested for microbials pursuant to Rule 4-121(F)(3).

c. Evidence of any achieved Reduced Testing Allowance - If a Licensee utilizes any Reduced Testing Allowances, then they must maintain documentation demonstrating how it was obtained and maintained throughout the allowance with all applicable rules.

14. Sampling Unit Records – All records related to designated Sampling Managers, identified Sampling Units, and Transfers of Sampling Units. *See* Rules 3-810, 5-230, 5-320, 6-225, 6-320. This includes, but is not limited to, standard operating procedures that explain the requirements of sections 44-10-502(5), 44-10-503(10), 44-10-602(6) and 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements imposed by Rules 5-230, 5-320, 6-225, 6-320. 6-725, and 6-280.

15. License Application Records – All records provided by the Licensee to both the state and local licensing authorities in connection with an application for licensure pursuant to the Marijuana Code and these Rules.

16. Standard Operating Procedures – All standard operating procedures as required by these Rules, including up-to-date records of employee training, as follows:

a. Identification of required training of employees;

b. Documentation of training topic, training method, date of initial training, date of any necessary re-training, name and signature of trainer, and name and signature of employee;

c. Competency and effectiveness of employee training shall be adequately assessed in an appropriate manner determined by the Licensee that is described in the standard operating procedures.

17. Audited Product and/or Alternative Use Product Records – All records required to demonstrate compliance with Rule 5-325 and 6-325.

18. Corrective Action and Preventive Action records required by Rules 5-115, 5-210, 5-310, 6-110, 6-210, 6-310.

19. Certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers as required by Rule 5-310(F).

20. Records required to be maintained by Delivery Permit holders including delivery order requirements and contracts for delivery pursuant to Rule 3-615.

21. Recall records required by Rule 3-336 including the recall plan, recall notice, and results of any action taken pursuant to the recall plan.

22. All records related to Material Changes as required by Rules 3-330(D) and 3-335(L).

23. Records related to Adverse Health Events as required by Rule 3-920.

24. Internal Security Controls – Licensees must establish and maintain a security plan for each Licensed Premises, including at a minimum:

    a. Protocols for the end-of-day handling of Regulated Marijuana and cash;

    b. Protocols for reporting theft or burglaries when they are discovered to Local Law Enforcement, the Division, and Local Licensing Authority or Local Jurisdiction;

    c. Protocols for reconciling inventory after a theft or burglary has been discovered;

    d. Identification of exterior lighting of the Licensed Premises and any exterior camera angles, and protocols for maintenance of the lighting and cameras; and

    e. Identification of ingress and egress routes for the property and identification of any access control measures taken outside of the Licensed Premises.

25. Patient Documents – Documents required for a patient to register a primary Medical Marijuana Store as required by Rule 5-1105~~05~~(D).

26. Regulated Marijuana Concentrate Production Records – All records required by Rules 5-315, 6-315, and 6-815 regarding production of Regulated Marijuana Concentrate.

27. Marijuana Research and Development Facility Records – Documents and correspondence sent to or received from an independent reviewer or the Scientific Advisory Council and any testing records if required by Rule 5-725.

28. Documents Related to Pesticide Manufacturers – Affidavit from a Pesticide Manufacturer that it meets the requirements of the Rule and the written agreement between the Licensee and the Pesticide Manufacturer as required by Rule 7-115.

29. Expiration date and use-by date documents required by Rule~~s 3-330(F) and~~ 3-335(M), 3-1005, and 3-1015.

30. Written report of change of management personnel as required by Rule 3-920(A)(2).

31. Current Owner and Employee List – This list must provide the full name and License number of all Owner Licensees and every employee who works for a Regulated Marijuana Business. The list shall include all employees who work for the Regulated Marijuana Business, whether or not they report to the Licensed Premises as part of their employment. A Regulated Marijuana Business can fulfill the requirements of this Rule by listing all employees in the Inventory Tracking System for each Licensed Premises. If a Regulated Marijuana Business does not use the Inventory Tracking System to list all employees, it must maintain a separate record for employees who do not report to the Licensed Premises.

32. Documentation required to demonstrate valid responsible vendor designation(s).

33. Source Genetic Material Records - Licensees receiving Genetic Material in accordance with Rules 5-305 and 6-305 must, at a minimum, maintain the following records:

    a. The name, address, and license/registration/permit identification of the source of the Genetic Material;

    b. All certificates of analysis associated with the Genetic Material; and

c. Any other records that clearly document the chain of custody of the Genetic Material.

34. All other records required by these Rules.

C. Records Required to be Maintained in the Inventory Tracking System. The following records must be maintained by Licensees in the Inventory Tracking System:

1. Records Related to Inventory Tracking. A Regulated Marijuana Business must maintain accurate and comprehensive inventory tracking records that account for, reconcile, and evidence all inventory activity for Regulated Marijuana from either seed or Immature Plant stage until the Regulated Marijuana is destroyed or Transferred to another Regulated Marijuana Business, a consumer, a patient, or a Pesticide Manufacturer.

2. Records Related to Transport. A Regulated Marijuana Business must maintain adequate records for the transport of all Regulated Marijuana. See Rule 3-605 – Transport: All Regulated Marijuana Businesses.

3. Employees Required to be Listed in the Inventory Tracking System. A Regulated Marijuana Business must use the Inventory Tracking System to list all employees who report to the Licensed Premises. The employee list in the Inventory Tracking System must include the full name and Employee License number of every employee who works on the premises. The Regulated Marijuana Business is responsible for updating its list of employees who work at the Licensed Premises in the Inventory Tracking System within 10 days of an employee commencing or ceasing employment.

4. Testing results.

D. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this Rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.

E. Violation Affecting Public Safety. Violation of this Rule may constitute a license violation affecting public safety.

F. Provision of Any Requested Record to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

Basis and Purpose – 3-910

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), and 44-10-203(2)(j), C.R.S. A Regulated Marijuana Business must collect and remit sales tax on all retail sales made pursuant to the licensing activities. The purpose of this rule is to clarify when such taxes must be remitted to the Colorado Department of Revenue. This Rule 3-910 was previously Rules M and R 902, 1 CCR 212-1 and 1 CCR 212-2.

3-910 – Reporting and Transmittal of Taxes

A. Sales and Use Tax Returns Required. All state and state-collected sales and use tax returns must be filed, and all taxes must be remitted to the Department of Revenue, on or before the 20th day of the month following the reporting month. For example, a January return and remittance will be due to the Department of Revenue by February 20th. If the due date (20th of the month) falls on

a weekend or holiday, the next business day is considered the due date for the return and remittance.

B. Excise and Retail Marijuana Sales Tax Returns Required. A Retail Marijuana Business shall submit any applicable tax returns and remit any payments due pursuant to Article 28.8 of Title 39, C.R.S.

C. Proof of Tax Remittance Required. All state tax payments shall require proof of remittance with the State Licensing Authority. A Retail Marijuana Cultivation Facility must maintain records evidencing the payment of all required excise taxes. Proof of retail sales taxes shall be identified in required tax records, tracking systems, and sales receipts provided to consumers.

Basis and Purpose – 3-915

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), and 44-10-1001(1), C.R.S. The Marijuana Code mandates that a Regulated Marijuana Business must pay for an audit when the State Licensing Authority deems an audit necessary. This rule explains when an audit may be deemed necessary and sets forth possible consequences of a Regulated Marijuana Business's refusal to cooperate or pay for the audit. This Rule 3-915 was previously Rules M and R 903, 1 CCR 212-1 and 1 CCR 212-2.

3-915 – Independent Audit May Be Required

A. State Licensing Authority May Require Independent Audit.

1. When the State Licensing Authority deems it necessary, it may require a Regulated Marijuana Business to undergo an audit by an independent accountant. The scope of the audit may include, but need not be limited, to financial transactions and inventory control measures.

2. In such instances, the Division may attempt to mutually agree upon the selection of the independent accountant with a Regulated Marijuana Business. However, the Division always retains the right to select the independent accountant regardless of whether mutual agreement can be reached. The independent accountant shall be a certified public accountant licensed by, and in good standing with, the Colorado State Board of Accountancy.

3. The Regulated Marijuana Business will be responsible for all direct costs associated with the independent audit.

B. When Independent Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent accountant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:

1. A Regulated Marijuana Business does not provide requested records to the Division;

2. The Division has reason to believe that the Regulated Marijuana Business does not properly maintain its business records;

3. A Regulated Marijuana Business has a prior violation related to recordkeeping or inventory control;

4. A Regulated Marijuana Business has a prior violation related to diversion.

5. As determined by the Division, the scope of an audit conducted by the Division would be so extensive as to jeopardize the regular duties and responsibilities of the Division's audit or enforcement staff.

C. Compliance Required. A Regulated Marijuana Business must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an audit in accordance with this Rule.

D. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 3-920

The statutory authority for this rule includes but is not limited to sections 44-10-201(4), 44-10-204(1)(a), 44-10-202(1)(c), 44-10-202(1)(a), 44-10-204(1)(a), 44-10-203(1)(k), 44-10-313(12), and 44-10-701(2)(a), C.R.S. The State Licensing Authority must be able to immediately access information regarding a Regulated Marijuana Business's managing individual. Accordingly, this rule reiterates the statutory mandate that Licensees provide any management change to the Division within seven days of any change, and also clarifies that a Licensee must save a copy of any management change report to the Division, and clarifies that failure to follow this rule can result in discipline.

The State Licensing Authority finds it essential to the stringent and comprehensive enforcement of the Marijuana Code to regulate, monitor, and track all Regulated Marijuana in order to prevent diversion and to ensure that all Regulated Marijuana grown, processed, sold, and disposed of in the Regulated Marijuana market is accounted for transparently in accordance with the Marijuana Code.

Requiring Licensees to report instances when the Regulated Marijuana they cultivate, manufacture, distribute, sell, test, or dispose of is stolen, unlawfully Transferred, or otherwise diverted from the regulated market, or when Licensees discover plans to divert the Regulated Marijuana, emphasizes that Licensees are accountable for their Regulated Marijuana at all times and contributes to the transparency of the regulated market.

In addition to maintaining transparency in the regulated marijuana industry, the State Licensing Authority also must ensure the confidentiality of certain Licensee information and records, including information in the Inventory Tracking System. Requiring Licensees to report instances where the Inventory Tracking System was compromised or planned to be compromised through unlawful access, use for unlawful purposes, the deliberate alteration or deletion of data, or deliberately entering false data, contributes to ensuring the accuracy and transparency of the system and therefore the regulated market, and aids in maintaining the confidentiality of Licensee data.

This Rule 3-920 was previously Rules M and R 904, 1 CCR 212-1 and 1 CCR 212-2.

3-920 – Regulated Marijuana Business Reporting Requirements

A. Management Personnel Change Must Be Reported.

1. When Required. A Regulated Marijuana Business shall provide the Division a written report within seven days after any change in management personnel occurs. In addition, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer shall report any designation or change of Sampling Manager(s) through the Inventory Tracking System.

2. Licensee Must Maintain Record of Reported Change. A Regulated Marijuana Business must also maintain a copy of this written report with its business records as required in Rule 3-905.

3. Consequence of Failure to Report. Failure to report a change in a timely manner may result in discipline.

B. Reporting of Crime on the Licensed Premises or Otherwise Related to a Regulated Marijuana Business. A Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the Division any discovered plan or other action of any Person to (1) commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the subject Regulated Marijuana Business; or (2) compromise the integrity of the Inventory Tracking System. A report shall be made as soon as possible after the discovery of the action, but not later than 14 days. Nothing in this paragraph (B) alters or eliminates any obligation a Regulated Marijuana Business or Licensee may have to report criminal activity to a local law enforcement agency.

C. Adverse Health Event Reporting. If a Regulated Marijuana Business is notified of any possible Adverse Health Event, as defined by Rule 1-115, associated with Regulated Marijuana, it must report the Adverse Health Event to the Division within 48 hours from its receipt of notification of the Adverse Health Event. To the extent known after reasonable diligence to ascertain the information, the report must contain the name and contact information of the complainant, the date the complaint was received, the nature of the complaint, the Production Batch or Harvest Batch number, and any other identifying information found on the label of the Regulated Marijuana. The Regulated Marijuana Business must maintain records of reports of Adverse Health Events in accordance with Business Records Rule 3-905

Basis and Purpose – 3-925

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-204(1)(a), 44-10-203(2)(j), 44-10-203(2)(k), 44-10-203(1)(k), and 44-10-307(1)(e), C.R.S. *See also* articles 21, 22, 26 and 28.8 of title 39, C.R.S. The purpose of this rule is to clarify the Division's authority to provide taxation divisions within the Department copies of or access to reports or other information obtained from or regarding a Licensee, for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise and income taxes required by Title 39 of the Colorado Revised Statutes. Such information sharing is for a purpose authorized by the Marijuana Code. This Rule 3-925 was previously Rules M and R 905, 1 CCR 212-1 and 1 CCR 212-2.

3-925 – Department Information Access

A. Department Access to Reports or Other Information. The Division may provide taxation divisions within the Department copies of or access to reports or other information obtained from or regarding a Licensee for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise, and income taxes required by Title 39 of the Colorado Revised Statutes.

B. Confidentiality. Reports or other information provided to or accessed by taxation divisions within the Department for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise, and income taxes required by Title 39 of the Colorado Revised Statutes shall be considered part of the Department's investigation pursuant to subsection 39-21-113(4)(a), C.R.S., and the Division shall continue to maintain such records and information in its possession or control as confidential pursuant to subsection 44-10-204(1)(a), C.R.S.

Basis and Purpose – 3-930

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-204, 44-10-301, and 44-10-1001(1), C.R.S. This rule identifies the business records a Licensee can request from the Division and how the business records will be provided to the Licensee.

3-930 – Request for Business Records from the Division.

A. A Controlling Beneficial Owner, a Passive Beneficial Owner who is licensed or disclosed to the Division or an authorized representative according to the Division's records may request from the Division a copy of applications which the Controlling Beneficial Owner, the Passive Beneficial Owner or a Regulated Marijuana Business for which the requestor was identified on the ownership structure that has previously been submitted to the Division. The following limitations apply to requests for business records from the Division:

1. Requests for records under this rule are limited to applications submitted by a Licensee in the prior two (2) calendar years during which the requesting Controlling Beneficial Owner or Passive Beneficial Owner that was licensed or disclosed was identified on the Licensee's ownership structure on file with the Division.

2. Applications provided by the Division in response to a request under this rule will not include supporting documents. For example, business records provided by the Division under this rule will not include leases, operating agreements, or premises diagrams.

3. Business records provided to a Controlling Beneficial Owner, Passive Beneficial Owner that was licensed disclosed, or authorized representative under this rule will only be provided in an electronic format and sent only to the Controlling Beneficial Owner, disclosed Passive Beneficial Owner, or to an individual with a valid authorization letter on file with the Division.

B. The Division will not provide any business records or provide business records to any person which could violate the obligation to maintain the confidentiality of documents and information provided by Applicants and Licensees to the State Licensing Authority as provided in Section 44-10-204, C.R.S.

3-1000 Series – Labeling, Packaging, and Product Safety

Basis and Purpose – 3-1005

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b), 44-10-601(2)(a), 44-10-601(5), 44-10-603(1)(d), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product Transferred between Regulated Marijuana Businesses. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production, and sale of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. This Rule 3-1005 was previously Rules M and R 1001-1, 1 CCR 212-1 and 1 CCR 212-2.

3-1005 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility

A. Applicability. This Rule establishes minimum requirements for packaging and labeling Regulated Marijuana prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility. See Rule 3-1025 for minimum requirements for packaging and labeling Regulated Marijuana prior to Transfer to a Regulated Marijuana Testing Facility. The labeling

requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product.

B. Packaging and Labeling of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate, Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower, trim, wet whole plant, or Medical Marijuana Concentrate to another Medical Marijuana Business, or Retail Marijuana flower, trim, wet whole plant, or Retail Marijuana Concentrate to another Retail Marijuana Business:

1. Packaging of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate.

   a. Prior to Transfer to a Regulated Marijuana Business, Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be placed into a Container. The Container may but is not required to be Child-Resistant.

   b. Each Container of Regulated Marijuana flower or trim that is Transferred to a Regulated Marijuana Business shall not exceed 50 pounds of Regulated Marijuana flower or trim, but may include pre-weighed units that are within the sales limit in Rules 5-115(C),6-110(C), and 6-925(G).

   c. A Container of wet whole plant that is Transferred to a Regulated Marijuana Business may exceed 50 pounds, but shall not exceed 100 pounds.

   d. Each Container of Medical Marijuana Concentrate that is Transferred to a Medical Marijuana Business, or Retail Marijuana Concentrate that is Transferred to a Retail Marijuana Business, shall not exceed 50 pounds of Medical Marijuana Concentrate or Retail Marijuana Concentrate, but may include pre-weighed units that are within the applicable sales limit in Rules 5-115(C),6-110(C), and 6-925(G).

2. Labeling of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate. Prior to Transfer to a Regulated Marijuana Business, every Container of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be affixed with a label that includes at least the following information:

   a. The license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown, or the Accelerator Cultivator where the Retail Marijuana was grown;

   b. The Harvest Batch Number(s) assigned to the Regulated Marijuana or the Production Batch Number(s) assigned to the Regulated Marijuana Concentrate;

   c. If applicable, the license number of the Medical Marijuana Cultivation Facility(ies) that produced the Physical Separation-Based Medical Marijuana Concentrate, the Retail Marijuana Cultivation Facility(ies) that produced the Physical Separation-Based Retail Marijuana Concentrate, or the license number of the Accelerator Cultivator;

   d. If applicable, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Marijuana Concentrate was produced, the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana

Concentrate was produced, or the Accelerator Manufacturer(s) where the Retail Marijuana Concentrate was produced;

e. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container; and

f. Potency test results as required to permit the receiving Regulated Marijuana Business to label the Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate as required by these rules.

g. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. A list of all Ingredients, including Additives, used to manufacture the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

h. Expiration/Use-By Date. Beginning January 1, 2024, the expiration or use-by date as required in Rule 3-1015.

i. Storage Conditions. Beginning January 1, 2024, if a Licensee establishes a use-by date that is longer than nine months based on shelf stability testing in accordance with Rule 3-1015(B)(2)(a.5), then the label for the Regulated Marijuana shall include storage conditions as determined by the Regulated Marijuana Business that cultivated or manufactured the Regulated Marijuana.

C. Packaging and Labeling of Regulated Marijuana Product Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana Product to another Medical Marijuana Business, or Transferring Retail Marijuana Product to another Retail Marijuana Business:

1. Packaging of Regulated Marijuana Product.

a. Transfer to a Regulated Marijuana Business Other Than a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store, Regulated Marijuana Product shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Transfer to a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Medical Marijuana Store or Retail Marijuana Store, all Regulated Marijuana Product shall be packaged in a Child-Resistant Container that is ready for sale to the patient or consumer as required by the Rule 3-1010(D).

2. Labeling of Regulated Marijuana Product.

a. Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store, every Container of Regulated Marijuana Product shall be affixed with a label that includes at least the following information:

i. The license number of the Regulated Marijuana Cultivation Facility(ies) where the Medical Marijuana or Retail Marijuana was grown;

ii. The license number of the Regulated Marijuana Products Manufacturer that produced the Medical Marijuana Product or Retail Marijuana Product;

iii. The Production Batch Number(s) assigned to the Regulated Marijuana Product;

iv. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana Product prior to its placement in the Container; and

v. Potency test results as required to permit the receiving Regulated Marijuana Business to label the Regulated Marijuana Product as required by these rules.

b. Transfer to a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Store, every Container of Regulated Marijuana Product shall be affixed with a label ready for sale to the patient or consumer including all information required by Rules 3-1010(D)(2) and 3-1015(B).

D. Packaging and Labeling of Regulated Marijuana Seeds, ~~and~~ Immature Plants, and Genetic Material Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Regulated Marijuana seeds, ~~or~~ Immature P~~p~~lants, or Genetic Material to another Regulated Marijuana Business:

1. Packaging of Regulated Marijuana Seeds.

a. Prior to Transfer to a Regulated Marijuana Business, Regulated Marijuana seeds shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Each Container of Regulated Marijuana seeds that is Transferred to a Regulated Marijuana Business shall not exceed 10 pounds of Regulated Marijuana seeds.

2. Packaging of Immature Plants and Genetic Material. Prior to Transfer to a Regulated Marijuana Business, Immature ~~p~~Plants and Genetic Material shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Regulated Marijuana Seeds and Immature Plants. Prior to Transfer to a Regulated Marijuana Business, every Container of Regulated Marijuana seeds and all receptacles holding an Immature ~~p~~Plant shall be affixed with a label that includes at least the license number of the Regulated Marijuana Cultivation Facility where the Regulated Marijuana that produced the seeds or the Immature ~~p~~Plant was grown.

4. Labeling of Genetic Material. Prior to Transfer to another Regulated Marijuana Business, every receptacle of Genetic Material shall be affixed with a label that includes at least the license number of the Regulated Marijuana Cultivation Facility Transferring the Genetic Material and must be accompanied with records required in Rule 3-905.

E. Packaging and Labeling of Sampling Units. Regulated Marijuana Cultivation Facilities and Regulated Marijuana Products Manufacturers shall comply with the following minimum packaging and labeling requirements prior to Transferring any Sampling Unit to a Sampling Manager.

1. Packaging of Sampling Units. Prior to Transfer to a Sampling Manager, a Sampling Unit must be placed in a Container. If the Sampling Unit is Regulated Marijuana flower, trim, Medical Marijuana Concentrate, or Retail Marijuana Concentrate, the Container may, but is not required to, be Child-Resistant; however, the Container shall be placed into a Child-Resistant Exit Package at the point of Transfer to the Sampling Manager. If the Sampling Unit is composed of Regulated Marijuana Product, the Sampling Unit shall be packaged in a Child-Resistant Container.

2. Labeling of Sampling Units. Prior to Transfer to a Sampling Manager, every Container for a Sampling Unit shall be affixed with a label that includes at least the following information:

    a. Required License Number. The license number for the Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer Transferring the Sampling Unit.

    b. Batch Number(s). The relevant Harvest Batch number and/or Production Batch number from which the Sampling Unit was designated.

    c. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"

    d. Required Potency Statement.

        i. For a Sampling Unit composed of Regulated Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate, the potency of the Sampling Unit's active THC and CBD expressed as a percentage.

        ii. For a Sampling Unit composed of Regulated Marijuana Product, the potency of the Sampling Unit's active THC and CBD expressed in milligrams. If the potency of the Sampling Unit's active THC or CBD is less than 1 milligram, the potency may be expressed as "<1 mg."

        iii. The required potency statement shall be displayed either: (1) In a font that is bold, and enclosed within an outlined shape such as a circle or square; or (2) highlighted with a bright color, such as yellow.

    e. Date of Transfer. The label shall include the date of Transfer to the Sampling Unit.

    f. Patient Number. If the Sampling Unit contains Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product, the label must also include the patient registration number of the recipient Sampling Manager.

    g. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

        i. "This product was received as a Sampling Unit and may have been produced with undisclosed allergens, solvents, or pesticides, and may pose unknown physical or mental health risks. This product is not for resale and should not be used by anyone else."

F. Prohibited Transfers – All Regulated Marijuana Businesses. A Regulated Marijuana Business shall not Transfer to a Medical Marijuana Store, Retail Marijuana Store, Accelerator Store, or Retail Marijuana Hospitality and Sales Business—and a Medical Marijuana Store, Retail Marijuana Store, Accelerator Store, or Retail Marijuana Hospitality and Sales Business shall not accept nor offer for sale—any Regulated Marijuana that is not packaged and labeled in conformance with the requirements of these rules or that does not provide all information necessary to permit the Medical Marijuana Store, Retail Marijuana Store, Accelerator Store or Retail Marijuana Hospitality and Sales Business to package and label the Regulated Marijuana prior to Transfer to a patient or consumer. However, a Medical Marijuana Store or Retail Marijuana Store is not required to open any tamper evident Marketing Layer received from a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or a Retail Marijuana Products Manufacturer to verify the Container is Child-Resistant or labeled.

G. Shipping Containers. Licensees may Transfer multiple Containers of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product to a Regulated Marijuana Business in a Shipping Container.

1. RFID Tag Required. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch of Regulated Marijuana, one Production Batch of Regulated Marijuana Concentrate, or one Production Batch of Regulated Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag. *See* Rule 3-805 – Inventory Tracking System; Rule 3-605 – Transport: All Regulated Marijuana Businesses.

2. Labeling of Shipping Containers. Any Shipping Container that will not be displayed to the consumer is not required to be labeled according to these rules.

H. Packaging and Labeling of Regulated Marijuana Flower and Trim Prior to Transfer to a Pesticide Manufacturer or a Marijuana Research and Development Facility. The packaging and labeling requirements in these 3-1000 Series Rules also apply to any Transfer of Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

I. Marijuana Research and Development Facility Transfers to Persons as Part of an Approved Research Project. Any Marijuana Research and Development Facility conducting research as part of an approved Research Project involving human subjects shall comply with all packaging and labeling requirements that are applicable to a Medical Marijuana Store prior to Transfer to a patient, unless the Marijuana Research and Development Facility requests and receives in advance a waiver of specific packaging or labeling requirements in connection with the approved Research Project.

J. Research Transfers Prohibited. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Pesticide Manufacturer or a Licensed Research Business.

K. Violation Affecting Public Safety. A violation of any rule in these 3-1000 Series Rules may be considered a license violation affecting public safety.

Basis and Purpose – 3-1010

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b), 44-10-601(2)(a), 44-10-601(5), 44-10-603(1)(d), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define general packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product prior to Transfer to a patient or consumer. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to patients and consumers to make informed decisions and first responders in the event of accidental ingestion, over ingestion or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. This Rule 3-1010 was previously Rules M and R 1002-1, 1 CCR 212-1 and 1 CCR 212-2.

3-1010 – Packaging and Labeling: General Requirements Prior to Transfer to a Patient or Consumer

A. Applicability. This Rule establishes general requirements for packaging and labeling Regulated Marijuana prior to Transfer to a patient or consumer. The labeling requirements in this Rule apply to all Containers immediately containing any Regulated Marijuana. The labeling requirements based on intended use in Rule 3-1015 are in addition to, not in lieu of, the requirements in this Rule.

1. Exemption for Transfers to Consumers by a Retail Marijuana Hospitality and Sales Business. Unless otherwise provided by these rules, a Retail Marijuana Hospitality and Sales Business Transferring Retail Marijuana to consumers in compliance with the packaging and labeling requirements of Rule 3-1020 is exempt from the requirements of this Rule.

B. Labeling Requirements – All Regulated Marijuana.

1. Font Size. Required labeling text on the Container and any Marketing Layer must be no smaller than 1/16 of an inch.

2. Labels Shall Not Be Designed to Appeal to Children. A Regulated Marijuana Business shall not place any content on a Container or the Marketing Layer in a manner that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.

3. False or Misleading Statements. Label(s) on a Container and any Marketing Layer shall not include any false or misleading statements.

4. Trademark Infringement Prohibited. No Container or Marketing Layer shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Regulated Marijuana is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.

5. Health and Benefit Claims. The label(s) on the Container and any Marketing Layer shall not make any claims regarding health or physical benefits to the patient or consumer.

6. Use of English Language. Labeling text on the Container and any Marketing Layer must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.

7. Unobstructed and Conspicuous. Labeling text on the Container and any Marketing Layer must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed and permanently hidden from view. For example and not by means of limitation, labels may be accordion, expandable, extendable or layered to permit labeling of small Containers.

8. Use of the Word "Candy" and/or "Candies" Prohibited.

   a. Licensees shall not use the word(s) "candy" and/or "candies" on the label of any Container holding Regulated Marijuana, or of any Marketing Layer.

   b. Notwithstanding the requirements of this subparagraph, a Regulated Marijuana Business whose identity statement contains the word(s) "candy" and/or "candies" may place its Identity Statement on the label of the Container holding Regulated Marijuana, or of any Marketing Layer.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Regulated Marijuana is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule 3-905(A).

   a. Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division's regular business hours.

10. Containers and Marketing Layers. The Container and any Marketing Layer shall have a label with all information required by these 3-1000 Series Rules. Any intermediary packaging between the Container and the Marketing Layer is not required to be labeled in accordance with these rules.

11. Exit Packages.

   a. Exit Packages Permitted for Child-Resistant Containers. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store may but is not required to place a Child-Resistant Container into an Opaque Exit Package at the point of Transfer to the patient or consumer.

   b. Exit Packages Required for Regulated Marijuana Flower, Trim, and Seeds. Any Regulated Marijuana flower, trim, or seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient or consumer. The Exit Package is not required to be labeled but may include the Medical Marijuana Store's, Retail Marijuana Store's, or Accelerator Store's Identity Statement and/or Standardized Graphic Symbol.

C. Packaging and Labeling of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate Prior to Transfer to a Patient or Consumer. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower and trim, Retail Marijuana flower and trim, Medical Marijuana Concentrate, or Retail Marijuana Concentrate to a patient or consumer:

1. Packaging of Regulated Marijuana Flower and Trim. Prior to Transfer to a patient or a consumer, Regulated Marijuana flower and trim shall be in a Container that does not exceed the sales limit in Rules 5-115(C) and 6-110(C). The Container may but is not

required to be Child-Resistant. Any Regulated Marijuana flower and trim in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient or consumer.

2. Packaging of Regulated Marijuana Concentrate. Prior to Transfer to a patient or consumer, Regulated Marijuana Concentrate shall be in a Child-Resistant Container that does not exceed the sales limit in Rules 5-115(C) and 6-110(C).

   a. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device that is within an intended use that is listed in Rule 3-1015(B) and is not an Alternative Use Product need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient or consumer.

   b. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device with an intended use that is listed in Rule 3-1015(B) and that is not an Alternative Use Product must be labeled with at least the Universal Symbol, but is not required to include "**Contains Marijuana. Keep away from children.**", prior to Transfer to a patient or consumer. The Universal Symbol shall be legible and no smaller than ¼ of an inch by ¼ of an inch.

   c. A Marketing Layer or Container for a Pressurized Metered Dose Inhaler or Vaporizer Delivery Device must be affixed with a label that states "**Not approved by the FDA.**"

   d. Nothing in this Rule authorizes the use of a syringe for any type of injection involving a needle piercing the skin.

3. Labeling of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate. Prior to Transfer to a patient or consumer, every Container of Regulated Marijuana flower and trim, or Regulated Marijuana Concentrate and any Marketing Layer shall be affixed with a label that includes at least the following information:

   a. Required License Number(s). The license number for each of the following:

      i. The Regulated Marijuana Cultivation Facility where the Regulated Marijuana was grown;

      ii. If applicable, the Regulated Marijuana Cultivation Facility(ies) where the Physical Separation-Based Medical Marijuana Concentrate or Physical Separation-Based Retail Marijuana Concentrate was produced;

      iii. If applicable, the Regulated Marijuana Products Manufacturer where the Medical Marijuana Concentrate or Retail Marijuana Concentrate was produced; and

      iv. The Regulated Marijuana Store that sold the Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate to the patient or consumer, except the Regulated Marijuana Store may affix its license number to the Container or Marketing Layer.

      v. Retail Marijuana that was designated as Medical Marijuana pursuant to Rule 5-235, 6-230, 6-730 must be labeled with the license number of the Retail Marijuana Cultivation Facility.

vi. Retail Marijuana Concentrate that was designated as Medical Marijuana Concentrate pursuant to Rule 5-335, 6-335, 6-830 must be labeled with the license number of the Retail Marijuana Products Manufacturer.

b. Batch Numbers. The Harvest Batch Number(s) assigned to the Regulated Marijuana or the Production Batch Number(s) assigned to the Regulated Marijuana Concentrate.

c. Statement of Net Contents. The statement of net contents must identify the net weight of the Regulated Marijuana or net weight or volume of Regulated Marijuana Concentrate prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children."**

e. Required Potency Statement.

i. The potency of Regulated Marijuana flower or trim shall be expressed as: (1) the percentage of total THC and CBD from the test results for that Harvest Batch, or (2) if the Harvest Batch is not required to be tested, either as: (i) a range of percentages of total THC and CBD that extends from the lowest percentage to the highest percentage for each cannabinoid listed, from every test conducted on that strain of Regulated Marijuana cultivated by the same Regulated Marijuana Cultivation Facility during the preceding six months or (ii) an average for each cannabinoid listed, from every test conducted on that strain of Regulated Marijuana cultivated by the Regulated Marijuana Cultivation Facility during the preceding six months. If CBD is not detected in Harvest Batch, then Total CBD potency is not required.

ii. The potency of Medical Marijuana Concentrate's or Retail Marijuana Concentrate's Total THC and CBD shall be expressed as a percentage. If CBD is not detected in the Production Batch, then Total CBD potency is not required. The potency of Regulated Marijuana, Medical Marijuana Concentrate, and Retail Marijuana Concentrate shall be displayed either: (i) In a font that is bold, and enclosed within an outlined shape such as a circle or square; or (ii) Highlighted with a bright color such as yellow.

f. Date of Sale. The Regulated Marijuana Store shall affix the date of sale to the patient or consumer to the Container or Marketing Layer.

g. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or Marking Layer at the time of Transfer to the patient.

h. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

i. Ingredient List Including Major Allergens. If applicable, a list of all Ingredients used to manufacture the Regulated Marijuana Concentrate including identification of any major allergens contained in the Regulated Marijuana Concentrate in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and

Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this Rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

j. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy.**"

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery**."

k. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers.

i. Ingredient List. A list of all Ingredients, including Additives, used to manufacture the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

ii. Expiration Date. Effective July 1, 2022, a Marijuana Products Manufacturer that produces a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler shall include an expiration date pursuant to Rule 3-335(M).

iii. Storage Conditions. Effective July 1, 2022, a Marijuana Products Manufacturer that produces a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler shall include ideal storage conditions for the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler pursuant to Rule 3-335(M).

D. Packaging and Labeling of Regulated Marijuana Product, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, and Audited Product. A Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Accelerator Manufacturer, Medical Marijuana Store, Retail Marijuana Store, and an Accelerator Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Regulated Marijuana Product:

1. Packaging of Regulated Marijuana Product. Every Regulated Marijuana Product shall be in a Child-Resistant Container at the time of Transfer to a Medical Marijuana Store or Retail Marijuana Store in accordance with the following packaging limits:

a. Regulated Marijuana Product Other than Edible Medical Marijuana Product or Edible Retail Marijuana Product. Medical Marijuana Product that is not Edible Medical Marijuana Product and Retail Marijuana Product that is not Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that does not exceed the sales limit in Rule 5-115(C) and 6-110(C). A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device that is within the intended use that is listed in Rule 3-1015(B) and is not an Alternative Use Product need not itself be Child-Resistant but must be placed into a Child-

Resistant Container prior to Transfer to a patient or consumer. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device within an intended use that is listed in Rule 3-1015(B) and that is not an Alternative Use Product must be labeled with at least the Universal Symbol, but is not required to include "**Contains Marijuana. Keep away from children.**", prior to Transfer to a patient or consumer. The Universal Symbol shall be legible and no smaller than ¼ of an inch by ¼ of an inch. Nothing in this Rule authorizes the use of a syringe for any type of injection involving a needle piercing the skin.

b. Edible Medical Marijuana Product. Every Edible Medical Marijuana Product including Liquid Edible Medical Marijuana Product shall be in a Child-Resistant Container. If the Edible Medical Marijuana Product contains multiple portions then it shall be placed into a Child-Resistant Container that is Resealable.

c. Edible Retail Marijuana Product. Edible Retail Marijuana Product shall be in a Child-Resistant Container as follows:

i. Single-Serving Edible Retail Marijuana Product. Every Single-Serving Edible Retail Marijuana Product must be placed into a Child-Resistant Container.

ii. Bundled Single-Serving Edible Retail Marijuana Product. Single-Serving Edible Retail Marijuana Products that are placed into a Child-Resistant Container may be bundled into a larger Marketing Layer so long as the total amount of active THC per Marketing Layer does not exceed 100 milligrams.

iii. Multiple-Serving Edible Retail Marijuana Product. Every Multiple-Serving Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that is Resealable and shall not exceed 100 milligrams of active THC per Container.

d. Liquid Edible Medical Marijuana Product and Liquid Edible Retail Marijuana Product. Liquid Edible Medical Marijuana Product and Single-Serving Liquid Edible Retail Marijuana Product shall be packaged in a Child-Resistant Container:

i. Repealed.

ii. Multiple-Serving Liquid Edible Retail Marijuana Product. Each Liquid Edible Retail Marijuana Product that is a Multiple-Serving Edible Retail Marijuana Product shall be:

a. Packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving in increments equal to or less than 10 milligrams of active THC per serving, with no more than 100 milligrams of active THC total per Container; and

b. The measurement component is within the Child-Resistant cap or closure of the bottle and is not a separate component.

iii. Multiple-Serving Liquid Edible Medical Marijuana Product. Each Liquid Edible Medical Marijuana Product that is a Multiple-Serving Edible Medical Marijuana Product shall be:

a. Packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving; and

b. The measurement component is within the Child-Resistant cap or closure of the bottle, and is not a separate component.

e. Audited Product. The Container containing Audited Product for administration by: (i) metered dose nasal spray or (ii) vaginal administration must be Child Resistant and labeled. A Container holding Audited Product for rectal administration need not be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient or consumer.

i. A metered dose nasal spray must be affixed with a label that states: "**Not approved by FDA.**"

ii. The Container holding Audited Product for vaginal administration and rectal administration must be affixed with a label that states: "**Not approved by FDA.**"

iii. For example and not by means of limitation, labels may be affixed using the following methods: accordion, expandable, extendable, layered, tags, or stickers.

2. Labeling of Regulated Marijuana Product. Prior to Transfer to a Regulated Marijuana Store and a patient or consumer, every Container of Regulated Marijuana Product and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Regulated Marijuana Cultivation Facility where the Medical Marijuana or Retail Marijuana was grown;

ii. The Regulated Marijuana Products Manufacturer where the Medical Marijuana Product or Retail Marijuana Product was produced; and

iii. The Regulated Marijuana Store that sold the Medical Marijuana Product to a patient or consumer, except the Regulated Marijuana Store may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Production Batch Number(s) assigned to the Regulated Marijuana Product.

c. Statement of Net Contents. The statement of net contents must identify the net weight, volume, or number of Regulated Marijuana Products prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children**."

e. Ingredient List Including Major Allergens. A list of all Ingredients used to manufacture the Regulated Marijuana Product including identification of any major allergens contained in the Regulated Marijuana Product in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this Rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

f. Required Potency Statement. The Target Potency or potency value determined from testing by a Regulated Marijuana Testing Facility of the Regulated Marijuana Product's active THC and CBD expressed in milligrams. If the Regulated Marijuana Product's Target Potency or potency value of THC or CBD is less than 1 milligram, the potency may be expressed as "<1 mg." If CBD is not detected in the Regulated Marijuana Product, then active CBD potency is not required. The Target Potency or potency value, shall be displayed either:

i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

g. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate used as a production input in any Medical Marijuana Product, or Solvent-Based Retail Marijuana Concentrate used as a production input in any Retail Marijuana Product.

h. Date of Sale. The Regulated Marijuana Store shall affix the date of sale to the Container or Marketing Layer at the time of Transfer to the patient or consumer.

i. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or Marking Layer at the time of Transfer to the patient.

j. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy.**"

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery.**"

3. Labeling of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana. Prior to Transfer to a Regulated Marijuana Store and to a patient or consumer, every Container of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Regulated Marijuana Cultivation Facility where the Medical Marijuana or Retail Marijuana was grown;

ii. The license number of the Regulated Marijuana Business where the Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana was produced; and

iii. The Regulated Marijuana Store that sold the Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana to a patient or consumer, except the Regulated Marijuana Store may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Production Batch Number(s) assigned to the Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana.

c. Statement of Net Contents. The statement of net contents must identify the net weight (excluding the paper, wrapper, filter and/or equivalent) of each Pre-Rolled Marijuana joint or Infused Pre-Rolled Marijuana joint prior to its placement in the Container and the number of joints in each Container of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: **"Contains Marijuana. Keep away from children."**

e. Solvent List. If applicable, a list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate used in the creation of Infused Pre-Rolled Marijuana.

f. Required Potency Statement. The potency of Pre-Rolled Marijuana shall be expressed as: (1) the percentage of total THC and CBD from the test results of each Production Batch, or (2) if each Production Batch is not required to be tested, either as: (i) a range of percentages of total THC and CBD that extends from the lowest percentage to the highest percentage for each cannabinoid listed, from every test conducted for a particular type of Pre-Rolled Marijuana produced by the same Regulated Marijuana Business during the preceding six months or (ii) an average for each cannabinoid listed, from every test conducted for a particular type of Pre-Rolled Marijuana produced by the same Regulated Marijuana Business during the preceding six months. If CBD is not detected in the Production Batch, then Total CBD potency is not required. The potency of Infused Pre-Rolled Marijuana shall be expressed as the percentages of total THC and CBD from the test results of each Production Batch. If CBD is not detected in the Production Batch, then Total CBD potency is not required. The potency of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana shall be displayed either:

i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

g. Date of Sale. The Regulated Marijuana Store shall affix the date of sale to the Container or Marketing Layer at the time of Transfer to the patient or consumer.

h. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or Marking Layer at the time of Transfer to the patient.

i. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. **"This product was produced without regulatory oversight for health, safety, or efficacy."**

ii. **"There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery."**

E. Packaging and Labeling of Seeds and Immature Plants Prior to Transfer to a Patient or Consumer. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall comply with the following minimum packaging and labeling requirements prior to Transferring seeds or Immature ~~p~~Plants to a patient or consumer:

1. Packaging of Regulated Marijuana Seeds. Prior to Transfer to a patient or consumer, Regulated Marijuana seeds shall be in a Container. The Container may but is not required to be Child-Resistant. Any Regulated Marijuana seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient or consumer.

2. Packaging of Immature Plants. Prior to Transfer to a patient or consumer, Immature ~~p~~Plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Seeds and Immature Plants. Prior to Transfer to a patient or consumer, every Container holding Regulated Marijuana seeds and any receptacle containing an Immature ~~p~~Plant must be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Medical Marijuana Cultivation Facility where the Medical Marijuana that produced the seeds or Immature ~~p~~Plant was grown, the Retail Marijuana Cultivation Facility where the Retail Marijuana that produced the seeds or the Immature ~~p~~Plant was grown, or the Accelerator Cultivator where the Retail Marijuana that produced the seeds or the Immature ~~p~~Plant was grown; and

ii. The Medical Marijuana Store that sold the seeds or Immature ~~p~~Plant to the patient, the Retail Marijuana Store that sold the seeds or Immature ~~p~~Plant to the consumer, or the Accelerator Store that sold the seeds or Immature ~~p~~Plant to the consumer.

b. Universal Symbol. The Universal Symbol on the front of the Container holding seeds and the receptacle containing each Immature plant, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"

c. Statement of Net Contents for Seeds. A statement of net contents identifying the number of seeds in the Container.

d. Date of Sale. The Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall affix the date of sale to the patient or consumer to the Container or receptacle.

e. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or receptacle at the time of Transfer to the patient.

f. Required Warning Statements:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy**."

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery**."

F. Permissive Information.

1. Identity Statement. A label affixed to a Container of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product or any Marketing Layer may include, but is not required to include, the Identity Statement and/or Standardized Graphic Symbol for:

a. The Regulated Marijuana Cultivation Facility(ies) where the Medical Marijuana or Retail Marijuana was grown;

b. The Regulated Marijuana Products Manufacturer that manufactured the Regulated Marijuana Product or Regulated Marijuana Concentrate; and/or

c. The Regulated Marijuana Store that sold the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product.

2. Nutritional Fact Panel. Label(s) may include, but are not required to include, a nutritional fact panel or dietary supplement fact panel in substantial conformance with 21 CFR 101.9 (2016) or 21 C.F.R. 101.36 (2016) as follows:

a. For Edible Medical Marijuana Products or Edible Retail Marijuana Products other than pills, capsules, and tinctures and Food-Based Medical Marijuana Concentrate or Food-Based Retail Marijuana Concentrate the nutritional fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.9(C) (2016) which provides the FDA's nutritional labeling requirements for food;

b. For pills, capsules, and tinctures, the dietary supplement fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.36 (2016) which provides the FDA's nutritional labeling requirements for dietary supplements.

i. Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division maintains copies of 21 C.F.R. 101.9(C) (2016) and 21 C.F.R. 101.36 (2016), which are available to the public for inspection and copying during the Division's regular business hours.

3. Other Permissive Information. The labeling requirements in the 3-1000 Series Rules provide only the minimum labeling requirements. Licensees may include additional information on the label(s) so long as such information is consistent with the requirements of these Rules.

Basis and Purpose – 3-1015

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(d)(IV)(A)-(C), 44-10-203(2)(f), 44-10-203(2)(w), 44-10-203(1)(a), 44-10-601(2)(a), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define additional labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and/or Regulated Marijuana Product (except Regulated Marijuana seeds and Immature ~~p~~Plants) based on its intended use. These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule 3-1010. This Rule 3-1015 was previously Rules M and R 1003-1, 1 CCR 212-1 and 1 CCR 212-2. The Division and State Licensing Authority intend to monitor data regarding Regulated Marijuana use-by dates following implementation of these rules, and will make any necessary changes, including but not limited to, reducing the nine months use-by date if Licensees choose not to conduct stabilization studies.

3-1015 – Additional Labeling Requirements Prior to Transfer to a Patient or Consumer

A. Applicability. This Rule establishes additional labeling requirements for Regulated Marijuana (except seeds and Immature ~~p~~Plants), Regulated Marijuana Concentrate, and Regulated Marijuana Product prior to Transfer to a patient or consumer. The labeling requirements in this Rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. These labeling requirements based on intended use are in addition to, not in lieu of, the requirements in Rule 3-1010.

1. Exemption for Transfers to Consumers by a Retail Marijuana Hospitality and Sales Business. Unless otherwise provided by these rules, a Retail Marijuana Hospitality and Sales Business Transferring Retail Marijuana to consumers in compliance with the packaging and labeling requirements of Rule 3-1020 is exempt from the requirements of this Rule.

B. Additional Information Required on Every Container (Except Seeds and Immature Plants) Prior to Transfer to a Patient or Consumer. Prior to Transfer to a patient or consumer, every Container of Regulated Marijuana (except seeds and Immature ~~p~~Plants), Regulated Marijuana Concentrate, or Regulated Marijuana Product and any Marketing Layer must have a label that includes at least the following additional information.

1. Statement of Intended Use. The Container and any Marketing Layer shall identify one or more intended use(s) for Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product from the following exclusive list:

a. Inhaled Product:

i. Flower, shake, or trim;

ii. Pre-Rolled Marijuana and Infused-Pre-Rolled Marijuana;

iii. Solvent-Based Medical Marijuana Concentrate;

iv. Solvent-Based Retail Marijuana Concentrate;

v. Physical Separation-Based Medical Marijuana Concentrate;

vi. Physical Separation-Based Retail Marijuana Concentrate;

vii. Heat/Pressure-Based Medical Marijuana Concentrate;

viii. Heat/Pressure-Based Retail Marijuana Concentrate;

ix. Vaporizer Delivery Device;

x. Pressurized Metered Dose Inhaler.

b. For Oral Consumption:

i. Food or drink infused with Regulated Marijuana;

ii. Regulated Marijuana Concentrate intended to be consumed orally;

iii. Pills and capsules;

iv. Tinctures.

c. Skin and Body Products:

i. Topical;

ii. Transdermal.

d. Audited Product:

i. Metered Dose Nasal Spray;

ii. Vaginal Administration;

iii. Rectal Administration.

2. Inhaled Product. The “Inhaled Product” intended use may be used only for products intended for consumption by smoking or Vaporizer Delivery Device where the product is heated or burned prior to consumption, or through use of a Pressurized Metered Dose Inhaler. The label(s) on all inhaled product intended use shall also include:

a. The potency statement required by Rule 3-1010 for: (1) flower, shake, or trim, (2) Pre-Rolled Marijuana, (3) Infused-Pre-Rolled Marijuana, (4) Solvent-Based Medical Marijuana Concentrate, (5) Solvent-Based Retail Marijuana Concentrate, (6) Physical Separation-Based Medical Marijuana Concentrate, (7) Physical Separation-Based Retail Marijuana Concentrate, (8) Heat/Pressure-Based Medical Marijuana Concentrate, (9) Heat/Pressure-Based Retail Marijuana Concentrate shall be stated as the percentage of Total THC and CBD. If CBD is not detected, then total CBD potency is not required.

a.5. Use-By Date. Effective January 1, 2024, a product use-by date, upon which the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product will no longer be fit for consumption, or upon which the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product will no longer be optimally fresh. Once a label with a use-by date has been affixed to a Container containing Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product and any Marketing Layer, a

Licensee shall not alter that use-by date or affix a new label with a later use-by date. The use-by date shall not be longer than nine months from the harvest or production date, unless shelf stability testing, including but not limited to potency, microbial, and water activity testing, supports a longer shelf life. All use-by dates must be entered into the Inventory Tracking System prior to Transfer. Prior to Transfer to a patient or consumer, a Regulated Marijuana Store or Accelerator Store must inform the patient or consumer if the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product is past its use-by date.

b. The potency statement required by Rule 3-1010 for Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers shall be stated as either the percentage of Total THC and CBD, or the number of milligrams of Total THC and CBD, per cartridge, pen, or inhaler. If the potency value for Total THC or CBD of the Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers is less than one milligram, the potency may be expressed as "<1 mg." If CBD is not detected in the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler, then total CBD potency is not required.

c. Additional Labeling Requirement for Regulated Marijuana Concentrate to Promote Consumer Health and Awareness: Effective January 1, 2023, if a Regulated Marijuana Concentrate that is an Inhaled Product cannot easily be measured or separable to the recommended serving size established under Rule 3-335(D)(3)(d) and (4)(f), the Regulated Marijuana Manufacturer that manufacturers the Regulated Marijuana Concentrate must:

i. Affix the Container of Regulated Marijuana Concentrate with a measuring device that permits the patient or consumer to measure each serving in a manner consistent with the recommended serving established under Rule 3-335(D); or

ii. Include a label on the Container of Regulated Marijuana Concentrate that provides instructions to allow the patient or consumer to measure each recommended serving pursuant to Rule 3-335(D).

3. For Oral Consumption. The label(s) on all Edible Medical Marijuana Products and Edible Retail Marijuana Products, including but not limited to confections, liquids, pills, capsules and tinctures, shall also include:

a. Potency Statement. The potency statement required by Rule 3-1010 shall be stated as: (1) milligrams of active THC and CBD per serving and (2) milligrams of active THC and CBD per Container where the Container contains more than one serving. The Target Potency may be used to fulfill the requirement of this Rule. If CBD is not detected, then active CBD potency is not required.

i. If the Edible Medical Marijuana Product's or Edible Retail Marijuana Product's Target Potency or potency value of active THC or CBD is less than one milligram per serving, the potency may be expressed as "<1 mg." If "<1 mg" was used to display the active THC or CBD per serving, then a corresponding statement regarding the total THC or CBD content for the entire Container shall be included on the Container. For example, if there are five servings in the Container, "<5 mg" should be displayed for the active THC or CBD statement that was represented as "<1 mg" per serving.

b. Additional Warning Statement Required. The following additional warning statement shall be included on the label on the Container or Marketing Layer for

all Edible Medical Marijuana Product and Edible Retail Marijuana Product: **"The intoxicating effects of this product may be delayed by up to 4 hours.**"

c. Expiration/Use-By Date. A product expiration date, upon which the Edible Medical Marijuana Product or Edible Retail Marijuana Product will no longer be fit for consumption, or a use-by-date, upon which the Edible Medical Marijuana Product or Edible Retail Marijuana Product will no longer be optimally fresh. Once a label with an expiration or use-by date has been affixed to a Container containing an Edible Medical Marijuana Product or Edible Retail Marijuana Product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date. All expiration or use-by dates must be entered into the Inventory Tracking System prior to Transfer. Prior to Transfer to a patient or consumer, a Regulated Marijuana Store or Accelerator Store must inform the patient or consumer if the Edible Medical Marijuana Product or Edible Retail Marijuana Product is past its expiration or use-by date.

d. Production Date. The date on which the Edible Medical Marijuana Product or Edible Retail Marijuana Product was produced which may be included in the Batch Number required by Rule 3-1010.

e. Statement Regarding Refrigeration. If an Edible Medical Marijuana Product or Edible Retail Marijuana Product is perishable, a statement that the product must be refrigerated.

4. Skin and Body Products (Topical and Transdermal). The "Skin and Body Products" intended use may be used only for products intended for consumption by topical or transdermal application, and must be intended for external use only. The label(s) on all skin and body products shall also include:

a. Topical Product Potency Statement. For topical product the potency statement required by Rule 3-1010 shall be stated as the number of milligrams of active THC and CBD per Container. The Target Potency may be used to fulfill the requirement of this Rule. If CBD is not detected, then active CBD potency is not required. If the THC or CBD comprises less than one percent of the total cannabinoids, the potency may be expressed as less than one percent of the total cannabinoids.

b. Transdermal Product Potency Statement. For transdermal product, the potency statement required by Rule 3-1010 shall be stated as the number of milligrams of active THC and CBD per transdermal product, and the total number of milligrams of active THC and CBD per Container. The Target Potency may be used to fulfill the requirement of this Rule. If CBD is not detected, then active CBD potency is not required.

i. If the transdermal product's Target Potency or potency value of active THC or CBD is less than one milligram per transdermal product, the potency may be expressed as "<1 mg." If "<1 mg" was used to display the active THC or CBD per transdermal product, then a corresponding statement regarding the total THC or CBD content for the entire Container shall be included on the Container. For example, if there are five servings in the Container, "<5 mg" should be displayed for the active THC or CBD statement that was represented as "<1 mg" per serving.

c. Expiration/Use-By Date. A product expiration or use-by date, after which the skin and body product will no longer be fit for use. Once a label with an expiration or

use-by date has been affixed to any Container holding a skin and body product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date. All expiration or use-by dates must be entered into the Inventory Tracking System prior to Transfer. Prior to Transfer to a patient or consumer, a Regulated Marijuana Store or Accelerator Store must inform the patient or consumer if the skin and body product is past its expiration or use-by date.

d. Production Date. The date on which the skin and body product was produced which may be included in the Batch Number required by Rule 3-1010.

5. Audited Product. Packaging and labeling for all Audited Products: (i) metered dose nasal spray, (ii) vaginal administration, or (iii) rectal administration shall include:

a. All packaging and labeling requirements required by this 3-1000 Series for Regulated Marijuana Products; except Rules 5-325 and 6-325 control where the context otherwise clearly requires.

b. Audited Product shall be packaged and labeled for Transfer to a patient or consumer prior to Transfer from a Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer.

c. Expiration/Use-By Date. A product expiration date that is appropriate for the Audited Product when stored at room temperature as verified by testing required by Rules 5-325 and 6-325. Once a label with an expiration date has been affixed to a Container containing an Audited Product, a Licensee shall not alter that expiration date, or affix a new label with a later expiration date. All expiration or use-by dates must be entered into the Inventory Tracking System prior to Transfer. Prior to Transfer to a patient or consumer, a Regulated Marijuana Store or Accelerator Store must inform the patient or consumer if the Audited Product is past its expiration or use-by date.

d. Production Date. The date on which the Audited Product was produced, which may be included in the Batch Number required by Rule 3-1010.

C. No Other Intended Use Permitted. No intended use other than those identified in this Rule shall be identified on any label, except as permitted by an Alternative Use Designation approved by the State Licensing Authority pursuant to Rules 5-325 and 6-325. Licensees shall accurately identify all intended use(s) from the exclusive list of intended uses in this Rule, or as required by the Alternative Use Designation, on the label.

1. Alternative Use Product. No Regulated Marijuana Business shall Transfer or accept an Alternative Use Product unless the Alternative Use Product received an Alternative Use Designation in accordance with Rules 5-325 and 6-325 and complied with all the requirements of Rules 5-325, 6-325, and 3-1005 through 3-1015, and with any additional packaging and labeling requirements identified in the Alternative Use Designation. At a minimum the label(s) on all Alternative Use Products shall include:

a. All packaging and labeling requirements applicable to the Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer by these 3-1000 Series Rules unless inconsistent with the Alternative Use Designation in which case the Alternative Use Designation shall control.

b. Expiration/Use-By Date. A product expiration date that is appropriate for the Alternative Use Product when stored at room temperature as verified by a

Regulated Marijuana Testing Facility. Once a label with an expiration date has been affixed to a Container containing Alternative Use Product, a Licensee shall not alter that expiration date, or affix a new label with a later expiration date.

c. Production Date. The date on which the Alternative Use Product was produced, which may be included in the Batch Number required by Rule 3-1010.

d. All other requirements identified by the Alternative Use Designation.

D. Multiple Intended Uses. Any Regulated Marijuana having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed. Licensees shall not counsel or advise any patient or consumer to use Regulated Marijuana other than in accordance with the intended use(s) identified on the label.

Basis and Purpose – 3-1020

The statutory authority for this rule includes but is not limited to 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Retail Marijuana Hospitality and Sales Businesses.

3-1020 – Packaging and Labeling: Requirements for Transfers to a Consumer at a Retail Marijuana Hospitality and Sales Business

A. Applicability. This Rule establishes minimum requirements for packaging and labeling Retail Marijuana Transferred to a consumer at a Retail Marijuana Hospitality and Sales Business.

B. Packaging and Labeling Exemptions and Minimum Requirements. A Retail Marijuana Hospitality and Sales Business may Transfer Retail Marijuana to a consumer without packaging and labeling under the following conditions:

1. The consumer intends to consume the Retail Marijuana on the Licensed Premises of the Retail Marijuana Hospitality and Sales Business;

2. At the time of Transfer to a consumer, the Retail Marijuana Hospitality and Sales Business provides the consumer with a written statement of the potency of the Retail Marijuana's active THC and CBD, which shall be expressed as a percentage for Retail Marijuana and Retail Marijuana Concentrate, and expressed in milligrams for Retail Marijuana Product. If CBD is not detected in the Retail Marijuana, then active CBD potency is not required;

3. The Retail Marijuana Hospitality and Sales Business maintains within the Restricted Access Area of the Licensed Premises—and makes available to the consumer upon request—written or electronic documentation reflecting all relevant information required in Rules 3-1010 and 3-1015; and

4. For Multiple-Serving Edible Retail Marijuana Product or Multiple-Serving Liquid Edible Retail Marijuana Product, the Retail Marijuana Hospitality and Sales Business shall at the time of Transfer to the consumer provide a measurement device necessary for the consumer to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of active THC per serving.

C. Packaging and Labeling Required Before Retail Marijuana is Removed from the Licensed Premises. Prior to a consumer removing any unconsumed Retail Marijuana from the Licensed Premises, the Retail Marijuana Hospitality and Sales Business shall:

1. Provide the consumer with written or electronic documentation reflecting all relevant information required in Rules 3-1010 and 3-1015; and

2. Place the unconsumed Retail Marijuana into a Child-Resistant Container, or if the Container is not Child-Resistant, a Child-Resistant Exit Package. The Container must be affixed with a label that includes at least the following:

   i. Universal Symbol. The Universal Symbol on the Container, no smaller than ½ inch by ½ inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"; and

   ii. Required Potency Statement. A written statement of the potency of the Retail Marijuana's total THC and CBD expressed as a percentage. A written statement of the potency of the Retail Marijuana Product's active THC and CBD expressed in milligrams. If the potency of the Regulated Marijuana Product's active THC or CBD is less than 1 milligram, the potency may be expressed as "<1 mg." If CBD is not detected in the Retail Marijuana, then active CBD potency is not required.

   iii. For Multiple-Serving Edible Retail Marijuana Product or Multiple-Serving Liquid Edible Retail Marijuana Product, the Retail Marijuana Hospitality and Sales Business shall provide a measurement device necessary for the consumer to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of active THC per serving.

D. Additional Packaging and Labeling Requirements for Retail Marijuana Hospitality and Sales Businesses.

1. Font Size. Required labeling text on the Container must be no smaller than 1/16 of an inch.

2. Labels Shall Not Be Designed to Appeal to Children. A Retail Marijuana Hospitality and Sales Business shall not place any content on a Container that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.

3. False or Misleading Statements. Label(s) on a Container shall not include any false or misleading statements.

4. Trademark Infringement Prohibited. No Container shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Retail Marijuana is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.

5. Health and Benefit Claims. The label(s) on the Container shall not make any claims regarding health or physical benefits to the consumer.

6. Use of English Language. Labeling text on the Container must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.

7. Unobstructed and Conspicuous. Labeling text on the Container must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example and not by means of limitation, labels may be accordion, expandable, extendable or layered to permit labeling of small Containers.

8. Use of the Word "Candy" and/or "Candies" Prohibited. Licensees shall not use the word(s) "candy" and/or "candies" on the label of any Container.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Retail Marijuana is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule 3-905(A). Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division's regular business hours.

Basis and Purpose – 3-1025

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b) The purpose of this rule is to define minimum packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product Transferred to a Regulated Marijuana Testing Facility. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product being Transferred to a Regulated Marijuana Testing Facility.

3-1025 – Packaging and Labeling: Minimum Requirements for Test Batch Transfers to a Regulated Marijuana Testing Facility

A. Applicability. This Rule establishes minimum requirements for packaging and labeling of Regulated Marijuana Test Batches prior to Transfer to a Regulated Marijuana Testing Facility. The labeling requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product.

B. Packaging and Labeling of Test Batches of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate, Prior to Transfer to a Regulated Marijuana Testing Facility. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Test Batches of Medical Marijuana flower, trim, wet whole plant, or Medical Marijuana Concentrate to a Medical Marijuana Testing Facility, and prior to Transferring Test Batches of Retail Marijuana flower, trim, wet whole plant, or Retail Marijuana Concentrate to a Retail Marijuana Testing Facility:

1. Packaging of Test Batches of Regulated Marijuana Flower, Trim, Wet Whole Plant and Regulated Marijuana Concentrate.

a. A Licensee shall submit Test Batches of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate in a transparent Container to allow for the Samples of the Test Batch to be photo documented.

b. Each Container containing a Test Batch of Regulated Marijuana flower, trim, or wet whole plant shall have at least 20% empty space. Test Batch Containers

shall not be completely full so that individual Samples of the Test Batch can be photo documented.

c. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. Test Batches from Production Batches of Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers must be packaged in the hardware or inhaler, respectively, that allows for the consumption.

2. Labeling of Test Batches of Regulated Marijuana Flower, Trim, Wet Whole Plant and Regulated Marijuana Concentrate. Prior to Transfer to a Regulated Marijuana Testing Facility, every Container containing a Test Batch of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be affixed with a label that includes at least the following information, some of which may be included on the Inventory Tracking System RFID Tag:

a. For Test Batches from Harvest Batches, the license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, or the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

b. For Test Batches of Concentrates from Production Batches, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Concentrate was produced, or the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana Concentrate was produced; and

c. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container.

C. Packaging and Labeling of Test Batches of Regulated Marijuana Product Prior to Transfer to a Regulated Marijuana Testing Facility. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Test Batches of Regulated Marijuana Product to a Regulated Marijuana Testing Facility:

1. Packaging Test Batches of Regulated Marijuana Product.

a. Prior to any Transfer of a Test Batch to a Regulated Marijuana Testing Facility, the Test Batch of Regulated Marijuana Product subject to testing shall be placed into the Container(s) in which the rest of the Production Batch will be sold. The Container may but is not required to be Child-Resistant.

2. Labeling of Test Batches of Regulated Marijuana Product. Prior to Transfer to a Regulated Marijuana Testing Facility, every Container containing a Test Batch of Regulated Marijuana Product shall be affixed with a label, which can be noted on the Inventory Tracking System RFID Tag, that includes at least the following information:

a. The license number of the Medical Marijuana Products Manufacturer or the Retail Marijuana Products Manufacturer that produced the Regulated Marijuana Product;

b. The Production Batch Number(s) assigned to the Regulated Marijuana Product;

c. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana Product prior to its placement in the Container; and

d. The serving size, number of serving per package, and the Target Potency as required for a Regulated Marijuana Testing Facility to assess potency variance.

D. Packaging and Labeling of Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana, Prior to Transfer to a Regulated Marijuana Testing Facility. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana to a Medical Marijuana Testing Facility, and prior to Transferring Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana to a Retail Marijuana Testing Facility:

1. Packaging of Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

a. Prior to any Transfer of a Test Batch to a Regulated Marijuana Testing Facility, the Test Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana subject to testing shall be placed into the Container(s) in which the rest of the Production Batch will be sold. The Container may but is not required to be Child-Resistant.

2. Labeling of Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana. Prior to Transfer to a Regulated Marijuana Testing Facility, every Container containing a Test Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana shall be affixed with a label that includes at least the following information, some of which may be included on the Inventory Tracking System RFID Tag:

a. For Test Batches from Harvest Batches, the license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, or the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown which was used to create Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;

b. For Test Batches of Concentrates from Production Batches, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Concentrate was produced, or the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana Concentrate was produced which was used to create Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;

c. The Production Batch Number(s) assigned to the Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana; and

d. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container.

3-1100 Series – Accelerator Program Operations

Basis and Purpose – 3-1105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees and Accelerator Licensees participating in the accelerator program. The Accelerator Program permits different structures. The first option is for the Accelerator-Endorsed Licensee and the Accelerator Licensee to have a mentor/apprentice relationship at the same premises pursuant to Rules 3-1105 and 3-1110. The second option is for the Accelerator-Endorsed Licensee and the Accelerator Licensee to have a separate premises relationship pursuant to Rules 3-1105 and 3-1115.

3-1105 – Accelerator Program Participation and Privileges

A. Licensed Premises. An Accelerator Licensee may share a Licensed Premises or operate at a separate premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store that is an Accelerator-Endorsed Licensee.

1. Shared Premises. An Accelerator Licensee may share the Licensed Premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store pursuant to this Rule 3-1105 and Rule 3-1110.

2. Separate Premises. An Accelerator Licensee participating in the accelerator program may operate at a separate premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store pursuant to this Rule 3-1105 and Rule 3-1115.

B. Number of Licenses held by an Accelerator Licensee.

1. An Accelerator Licensee may initially apply to be an Accelerator Cultivator, Accelerator Manufacturer or Accelerator Store and hold a single license.

2. After 180 days of demonstrated operations, an Accelerator Licensee may apply for additional accelerator licenses, which may include different accelerator license types. An Accelerator Licensee may not apply for more than one accelerator license until at least 180 days of demonstrated operations.

3. A Controlling Beneficial Owner who holds an accelerator license shall not have an Owner's Interest in more than three of the same accelerator license type. No Controlling Beneficial Owner shall have an Owner's Interest in more than nine total accelerator licenses.

C. Accelerator-Endorsed Licensee Required Equity Assistance Proposal.

1. An Accelerator-Endorsed Licensee must disclose its equity assistance proposal to the Division and to any prospective Social Equity Licensee pursuant to Rule 2-285 and these 3-1100 Series Rules prior to entering any contractual agreements with an Accelerator Licensee.

2. Required Information. An equity assistance proposal must detail the technical, compliance, and/or capital assistance the Accelerator-Endorsed Licensee intends to provide an Accelerator Licensee. All equity assistance proposals must, at a minimum, including the following:

a. The types of assistance the Accelerator-Endorsed Licensee intends to provide, which may include but is not limited to, the following types of assistance:

i. Accounting;

ii. Business services (e.g. sales and marketing);

iii. Financial or capital support;

iv. Information technology support;

v. Access to legal services from an attorney licensed in the state of Colorado; or

vi. Regulatory compliance support.

b. Whether the Accelerator-Endorsed Licensee intends to subcontract with any third parties to provide technical or compliance assistance, and the identity of the prospective third parties, if known;

c. Any applicable timelines associated with the provisions of the assistance the Accelerator-Endorsed Licensee intends to provide;

d. Whether the Accelerator-Endorsed Licensee intends to charge rent for a prospective Accelerator Licensee's use of the premises, and the amount of rent and required deposits, if applicable;

e. How the Accelerator-Endorsed Licensee plans to protect or minimize disruptions on a prospective Accelerator Licensee in the event of a change of Controlling Beneficial Owner of the Accelerator-Endorsed Licensee's license; and

f. Whether the Accelerator-Endorsed Licensee has been subject to any administrative action by the State Licensing Authority or the Local Jurisdiction within the preceding two years and, if so, whether there are any restrictions on the Licensee as a result of such administrative action.

3. Voluntary Information. An equity assistance proposal may, but is not required to, include additional information about the Accelerator-Endorsed Licensee, including but not limited to the following:

a. The Accelerator-Endorsed Licensee's business objectives and organizational values;

b. A description of the Accelerator-Endorsed Licensee's work environment;

c. Information regarding the Accelerator-Endorsed Licensee's business profile, including company size, revenue, and distribution capabilities;

d. Any educational or training assistance provided to the Accelerator Licensee in navigating human resources matters; and

e. Any other information that may be useful to informing prospective Accelerator Licensees and determining compatibility between an Accelerator-Endorsed Licensee and Accelerator Licensee.

4. Modification of Equity Assistance Proposal. Nothing in these rules shall preclude an Accelerator-Endorsed Licensee from amending or modifying its equity assistance proposal. The Accelerator-Endorsed Licensee shall submit the updated equity assistance proposal to the Division within 30 days of finalizing any such amendments or modifications.

5. The Accelerator-Endorsed Licensee may request that a prospective Social Equity Licensee enter into a non-disclosure agreement prior to providing the prospective Social Equity Licensee a copy of the Accelerator-Endorsed Licensee's equity assistance proposal in order to ensure the information remains confidential.

D. Equity Partnership Agreement – General Requirements. Prior to hosting or offering technical and/or capital support to an Accelerator Licensee, an Accelerator-Endorsed Licensee must first enter into an equity partnership agreement with the Accelerator Licensee. In addition to any other requirements in Rules 3-1110 and 3-1115, an equity partnership agreement must include the following minimum requirements:

1. The equity partnership agreement must be executed by both the Accelerator-Endorsed Licensee and the Accelerator Licensee.

2. The executed equity partnership agreement must represent the full legal and business relationship between the Accelerator-Endorsed Licensee and Accelerator Licensee unless additional agreements are permitted or required pursuant to Rules 3-1110 or Rule 3-1115.

3. The executed equity partnership agreement shall at a minimum, include the following:

   a. A description of the types of technical, compliance, and/or capital assistance the Accelerator-Endorsed Licensee is providing to the Accelerator Licensee;

   b. The timeline associate with the assistance the Accelerator-Endorsed Licensee is providing;

   c. If the Accelerator-Endorsed Licensee is charging rent for the Accelerator Licensee's use of the Licensed Premises, the rent amount, any required deposits, and length of lease;

   d. How the Accelerator-Endorsed Licensee will protect or minimize disruptions to the Accelerator Licensee in the event of a change of owner of the Accelerator-Endorsed Licensee's license;

   e. Conditions for amendments to the equity partnership agreement; and

   f. Conditions for dissolution of the equity partnership agreement.

4. An Accelerator-Endorsed Licensee must provide technical, compliance, and/or capital assistance to an Accelerator Licensee pursuant to its equity partnership agreement with an Accelerator Licensee. An Accelerator-Endorsed Licensee may provide technical and/or compliance assistance to an Accelerator Licensee through third parties. However, an equity partnership agreement cannot require an Accelerator Licensee to receive such assistance from a specific provider unless permitted pursuant to Rule 3-1115.

E. There shall not be any agreement(s) or contracts between the Accelerator-Endorsed Licensee and the Accelerator Licensee that are not disclosed to the Division.

F. Dissolution of Business Relationship. If the business relationship between the Accelerator-Endorsed Licensee and Accelerator Licensee dissolves, both parties must notify the Division within 10 days. The notification of dissolution must include the reasons for the dissolution of the business relationship between the Accelerator-Endorsed Licensee and Accelerator Licensee.

1. The Accelerator Licensee will have until renewal of the Accelerator License to identify a new Accelerator-Endorsed Licensee or apply for a new Regulated Marijuana Business license unless this deadline is extended by the Division. The Division may waive or reduce the application and/or licensing fees affiliated with the application. However, the Accelerator Licensee cannot operate without a Licensed Premises or an executed and valid equity partnership agreement with an Accelerator-Endorsed Licensee.

2. Upon notification of dissolution of the accelerator business relationship, the Division will determine whether the Accelerator-Endorsed Licensee retains the social equity leader designation for that calendar year.

G. Additional Privileges for Accelerator-Endorsed Licensees.

1. Social Equity Leader Designation. A Retail Marijuana Store, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer that is an Accelerator-Endorsed Licensee and that is operating under an equity partnership agreement with an Accelerator Licensee may be designated by the Division as a social equity leader for each year the Accelerator-Endorsed Licensee hosts an Accelerator Licensee on its premises. A social equity leader may use a logo or symbol created or approved by the Division to indicate its leadership status. The Accelerator-Endorsed Licensee may only use the social equity leader logo or symbol while the designation remains valid.

2. Mitigation. The Division and the State Licensing Authority may consider a social equity leader designation as a mitigating factor when determining the initiation of administrative action or assessment of penalties.

3. Compliance Assistance and Education Engagement. For an Accelerator-Endorsed Licensee operating under an equity partnership agreement with an Accelerator Licensee, the Division will conduct an on-site compliance assistance and education engagement with the Accelerator-Endorsed Licensee for purposes of supporting the Licensee's activities as an Accelerator-Endorsed Licensee.

4. Application and License Fee Exemptions. An Accelerator-Endorsed Licensee may submit a request to the State Licensing Authority for an exemption from application and license fees for a change of Controlling Beneficial Owner, change of location, or modification of premises that is directly related to its participation in the accelerator program.

    a. The request for an exemption may be included with the submission of the application for which it is requesting an exemption from fees. The request for exemption must include any information demonstrating the application is related to its participation in the accelerator program, including but not limited to, the positive impact to the Accelerator Licensee.

    b. If a request for an exemption is denied, the Applicant shall submit required fees within 10 days from notice that the fee exemption request was denied. Failure to submit required fees may result in denial of the application.

Basis and Purpose – 3-1110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees and Social Equity Licensees to participate in the accelerator program. This option is for the Accelerator-Endorsed Licensee and the Social Equity Licensee to have a mentor/apprentice type relationship pursuant to Rules 3-1105 and 3-1110.

3-1110 – Accelerator Shared Premises

A. Equity Assistance Plan – Additional Requirements. In addition to all equity assistance proposal requirements outlined in Rule 3-1105(C)(1), an Accelerator-Endorsed Licensee intending to share its Licensed Premises with an Accelerator Licensee must also include the following in tis equity assistance proposal:

    1. How the Accelerator-Endorsed Licensee will protect or minimize disruptions to a prospective Accelerator Licensee in the event of a change of location of the Accelerator-Endorsed Licensee's Licensed Premises;

2. The extent to which the Accelerator-Endorsed Licensee will provide equipment, ingredients, or other resources to an Accelerator Licensee pursuant to an equity partnership agreement.

B. Equity Partnership Agreement – Additional Requirements. An Accelerator-Endorsed Licensee's equity assistance proposal that includes the information required by Rule 3-1105 and this Rule 3-1110 may also serve as the equity partnership agreement.

1. How the Accelerator-Endorsed Licensee will protect or minimize disruptions to the Accelerator Licensee in the event of a change of location of the Accelerator-Endorsed Licensee's Licensed Premises;

2. Any intellectual property protections or restrictions;

3. Any agreements about operational control of any shared equipment, premises, or shared personnel;

4. Any agreements related to division of liability pursuant this Rule; and

5. Any non-disclosure agreements.

C. Division of Liability.

1. Shared Equipment. An Accelerator-Endorsed Licensee and Accelerator Licensee may share equipment in the same Licensed Premises if they have standard operating procedures addressing the following:

a. Rotational/time schedule for utilizing equipment;

b. Changes to the schedule; and

c. Sanitizing equipment.

2. Shared Ingredients and/or Co-Mingling of Inventory. An Accelerator-Endorsed Licensee and Accelerator Licensee may share non-marijuana ingredients such as soil, growing medium, fertilizers, sugar, flour, etc. If the Accelerator-Endorsed Licensee and the Accelerator Licensee share non-marijuana ingredients, they must have standard operating procedures for the protection, use, and maintenance of such products.

3. Inventory Tracking and Record Keeping. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee are each required to comply with the Inventory Tracking Requirements in the 3-800 Series Rules and all business records requirements in the 3-900 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements such as purchasing RFID tags for use by the Accelerator Licensee.

4. Security and Surveillance. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee are each required to comply with security and surveillance requirements in the 3-220 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements.

5. Other. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee will be jointly liable for any violations related to the Licensed Premises, security requirements, video surveillance requirements, health and safety requirements, possession limits, and

waste rules, unless the Licensees have expressly established severed liability in the equity partnership agreement. It may be considered mitigation if the Accelerator-Endorsed Licensee demonstrated the Accelerator Licensee failed to comply with the standard operating procedures.

D. Accelerator License Operational Control. The Accelerator-Endorsed Licensee and the Accelerator Licensee may define the division of operational control of equipment in the shared premises.

E. Intellectual Property Protections. The Accelerator-Endorsed Licensee and the Accelerator Licensee shall maintain control over their individual intellectual property unless expressly agreed to in the equity partnership agreement.

Basis and Purpose – 3-1115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees and Social Equity Licensees participating in the accelerator program. This option allows the Accelerator-Endorsed Licensee and the Social Equity Licensee to have a separate premises relationship pursuant to Rules 3-1105 and 3-1115.

3-1115 – Accelerator Separate Premises

A. Equity Assistance Proposal – Additional Requirements. In addition to all equity assistance proposal requirements outlined in Rule 3-1105(C)(1), an Accelerator-Endorsed Licensee intending to share a separate premises in its possession or control with an Accelerator Licensee must also include the following in its equity assistance proposal:

1. Estimate of the Accelerator Licensee's initial investment, if any;

2. Estimate of the Accelerator-Endorsed Licensee's initial investment;

3. Any anticipated application and/or licensing fees for which the Accelerator Licensee will be responsible;

4. Restrictions on the Accelerator Licensee's business (including any restrictions on sources of products or required vendors);

5. Assistance provided by the Accelerator-Endorsed Licensee to the Accelerator Licensee (including assistance in installing required security; hiring and training employees; providing necessary equipment; establishing prices; establishing administrative, bookkeeping, accounting, and inventory control procedures; etc.);

6. Advertising that will benefit the Accelerator Licensee;

7. Use of the Accelerator-Endorsed Licensee's brand, trade name, or trademarks;

8. Total number of licenses and locations of businesses the Accelerator-Endorsed License owns, operates, or is affiliated with;

9. Anticipated terms of the financing agreement, including leases and installment contracts offered directly or indirectly to the Accelerator Licensee;

10. Terms of renewal, termination, transfer, and dispute resolution procedures;

11. All proposed agreements, including any property or equipment leases;

12. The Accelerator-Endorsed Licensee's total annual revenue and fair financial projections of the Accelerator Licensee; and

13. The anticipated annual fee or percentage of profits the Accelerator Licensee will be required to pay the Accelerator-Endorsed Licensee for use of the Accelerator-Endorsed Licensee's brand, trade name, or trademarks.

B. Equity Partnership Agreement – Additional Requirements. In addition to all equity partnership agreement requirements outlined in Rule 3-1105, an equity partnership agreement between an Accelerator-Endorsed Licensee and Accelerator Licensee who is operating on a separate premises from the Accelerator-Endorsed Licensee must include the following:

1. Initial Investment.

   a. The Accelerator Licensee's initial business investment, if any; and

   b. The Accelerator-Endorsed Licensees initial business investment.

2. Fees. The fees, if any, the Accelerator Licensee and the Accelerator-Endorsed Licensee will be responsible for, which may include, but need not be limited to:

   a. Application and license fees;

   b. Assistance with legal fees, if any; and

   c. The annual fee or percentage of profits the Accelerator Licensee will be required to pay the Accelerator-Endorsed Licensee for use of the Accelerator-Endorsed Licensee's brand, trade name, or trademarks.

3. Restrictions on Accelerator Licensee Business Operations. Any restrictions placed on the Accelerator Licensee's business operations, which may include, but are not limited to:

   a. Ingredients, formulas, and processes the Accelerator Licensee is required to use;

   b. Sources of products;

   c. Advertising; and

   d. Third party vendors the Accelerator-Endorsed Licensee contracted with that the Accelerator Licensee will also be required to utilize;

4. Accelerator-Endorsed Licensee Obligations. All assistance the Accelerator-Endorsed Licensee will provide which may include, but is not limited to:

   a. Assistance in hiring and training of employees;

   b. Establishing prices;

   c. Establishing administrative, bookkeeping, accounting, and inventory control procedures;

   d. Resolving operating problems; and

   e. Licensed Premises and equipment buildout.

5. Accelerator Licensee Obligations. If the Accelerator Licensee will be required to:

   a. Comply with branding;

   b. Utilize only the intellectual property of the Accelerator-Endorsed Licensee;

   c. Use of identified third-party vendors; and

   d. Selling product to specific purchasers.

6. Terms of Renewal, Termination, and Dispute Resolution. Any terms regarding renewal of the business relationship, termination of the business relationship, and dispute resolution. Any dispute resolution terms may not require Division or State Licensing Authority involvement.

7. Advertising. Any terms regarding advertising including the amount and methods of advertising, the distribution of costs for advertising, whether the Accelerator Licensee may do its own advertising, and how the costs of advertising will be distributed.

8. Agreements. All agreements between the Accelerator-Endorsed Licensee and Accelerator Licensee, including leases for property or equipment and any nondisclosure agreements.

C. Division of Liability.

1. Equipment. The Accelerator-Endorsed Licensee and the Accelerator licensee are individually and separately responsible for their own equipment.

2. Ingredients. The Accelerator-Endorsed Licensee and the Accelerator Licensee are individually and separately responsible for their own ingredients, unless otherwise expressly agreed to in the equity partnership agreement.

3. Inventory Tracking and Record Keeping. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee are each required to comply with the Inventory Tracking Requirements in the 3-800 Series Rules and the Business Records in the 3-900 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements such as purchasing RFID tags for use by the Accelerator Licensee.

4. Security and Surveillance. The Accelerator-Endorsed Licensee and the Accelerator Licensee are individually and separately required to comply with security and surveillance requirements in the 3-200 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements.

5. Other.

   a. Accelerator Licensee Liability. An Accelerator Licensee is solely liable and responsible for all conduct and any violations that occur on the Accelerator Licensee's Licensed Premises.

   b. Accelerator-Endorsed Licensee Liability. An Accelerator-Endorsed Licensee that makes available a separate premises in the Accelerator-Endorsed Licensee's possession to an Accelerator Licensee and who is in compliance with the Marijuana Code and these Rules will only be liable and responsible for conduct

and any violations that occur on the Accelerator-Endorsed Licensee's Licensed Premises.

D. Operational Control. The Accelerator-Endorsed Licensee and the Accelerator Licensee are each responsible for the operational control at their separate Licensed Premises.

E. Intellectual Property. An Accelerator-Endorsed Licensee must permit and require the Accelerator Licensee to use the Accelerator-Endorsed Licensee's intellectual property. The Accelerator-Endorsed Licensee will maintain ownership and control of its intellectual property. The Accelerator Licensee shall maintain ownership and control of intellectual property it creates.

Part 4 – Regulated Marijuana Testing Program

Basis and Purpose – 4-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the mandatory testing portion of the Division's Regulated Marijuana sampling and testing program. This Rule 4-105 was previously Rules M and R 1502, 1 CCR 212-1 and 1 CCR 212-2.

4-105 – Regulated Marijuana Testing Program: Mandatory Testing

A. Required Sample Submission. A Regulated Marijuana Business may be required by the Division to submit a Sample(s) of Regulated Marijuana it possesses to a Medical Marijuana Testing Facility or a Retail Marijuana Testing Facility at any time regardless of whether it has achieved a Reduced Testing Allowance and without notice.

1. Samples collected pursuant to this Rule may be tested for potency or contaminants which may include, but is not be limited to, Pesticide, microbials, mycotoxin, molds, elemental impurities, residual solvents, biological contaminants, and chemical contaminants.

2. When a Sample(s) is required to be submitted for testing, the Regulated Marijuana Business may not Transfer or process into a Medical Marijuana Concentrate or Medical Marijuana Product any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product, or Transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, from the Inventory Tracking System package, Harvest Batch or Production Batch from which the Sample was taken, until it passes all required testing.

B. Methods for Determining Required Testing.

1. Random Testing. The Division may require Samples to be submitted for testing through any one or more of the following processes: random process, risk-based process, or other internally developed process, regardless of whether a Regulated Marijuana Business has achieved a Reduced Testing Allowance.

2. Inspection or Enforcement Tests. In addition, the Division may require a Regulated Marijuana Business to submit a Sample for testing if the Division has reasonable grounds to believe that:

a. Regulated Marijuana is contaminated or mislabeled;

b. A Regulated Marijuana Business is in violation of any product safety, health or sanitary statute, rule or regulation; or

c. The results of a test would further an investigation by the Division into a violation of any statute, rule, or regulation.

3. Beta Testing. The Division may require a Regulated Marijuana Business to submit Samples from certain randomly selected Harvest Batches or Production Batches for potency or contaminant testing prior to implementing mandatory testing.

C. Minimum Testing Standards. The testing requirements contained in this 4-100 Series are the minimum required testing standards. Regulated Marijuana Businesses are responsible for ensuring adequate testing on any Regulated Marijuana they produce or Transfer to ensure safety for human consumption.

D. Additional Sample Types. The Division may also require a Regulated Marijuana Business to submit Samples comprised of items other than Regulated Marijuana to be tested for contaminants which may include, but may not be limited to, Pesticide, microbials, molds, elemental impurities, residual solvents, biological contaminants, and chemical contaminants. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:

1. Specific Regulated Marijuana plant(s) or any portion of a Regulated Marijuana plant(s);

2. Any growing medium, water, or other substance used in the cultivation process;

3. Any water, solvent, or other substance used in the processing of a Regulated Marijuana Concentrate;

4. Any Ingredient or substance used in the manufacturing of a Regulated Marijuana Product; or

5. Swab of any equipment or surface.

E. R&D Testing.

1. R&D Tests. A Regulated Marijuana Business may submit Test Batches from a Harvest or Production Batch for R&D testing. R&D testing may be performed for any test required by these 4-100 Series Rules or any other test.

a. Passing R&D Test Results. If a Harvest or Production Batch passes an R&D test it shall not constitute a pass for the purposes of compliance with required contaminant or potency testing. If a Harvest or Production Batch passes an R&D test it shall not constitute a pass for purposes of achieving or maintaining a Reduced Testing Allowance. *See* Rules 4-120 and 4-125.

b. Failed R&D Test Results. If a Harvest or Production Batch fails an R&D test, it does not require compliance with failed test procedures. *See* Rule 4-135.

c. Failed R&D Test Results – Reduced Testing Allowance. A failing R&D test that is a contaminant or potency test required by these Rules shall be considered a failing result for the purposes of achieving or maintaining a Reduced Testing Allowance.

i. If a Regulated Marijuana Business that is actively working to achieve a Reduced Testing Allowance fails a R&D test, it must restart the process of achieving Reduced Testing Allowance.

ii. If a Regulated Marijuana Business that has achieved and maintained a Reduced Testing Allowance fails a R&D test for a test type required by these Rules, it must follow the appropriate Reduced Testing Allowance re-authorization procedure for the failed test type to maintain that Reduced Testing Allowance. *See* Rules 4-120(F)(2)(b), 4-121(H), and 4-125(H)(2)(b).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing sampling procedures and rules for the Division's Regulated Marijuana sampling and testing program. This Rule 4-110 was previously Rules M and R 1504, 1 CCR 212-1 and 1 CCR 212-2.

4-110 – Regulated Marijuana Testing Program: Sampling Procedures

A. Collection of Samples.

1. Sample Increment Collection. All Samples submitted for testing pursuant to this Rule must be collected by Division representatives or in accordance with the Division's sampling policy reflected in the marijuana laboratory testing reference library available at the Colorado Department of Public Health and Environment's website. This reference library may be continuously updated as new materials become available in accordance with section 25-1.5-106(3.5)(d), C.R.S.

2. Sample Increment Selection. The Division may elect, at its sole direction, to assign Division representatives to collect Sample Increments, or may otherwise direct Sample Increment selection, including, but not limited to, through Division designation of a Harvest Batch or Production Batch in the Inventory Tracking System from which a Regulated Marijuana Business shall select Samples for testing. A Regulated Marijuana Business, its Controlling Beneficial Owners, Passive Beneficial Owners, and employees shall not attempt to influence the Sample Increments selected by Division representatives. If the Division does not select the Harvest Batch or Production Batch to be tested, a Regulated Marijuana Business must collect and submit Sample Increments that are representative of the Harvest Batch or Production Batch being tested.

3. Adulteration or Alteration Prohibited. Pursuant to section 44-10-701(3)(b) and (9), C.R.S., it is unlawful for a Licensee or its agent to knowingly adulterate or alter, or attempt to adulterate or alter, any Sample Increments or Test Batches of Regulated Marijuana. The Sample Increments collected and submitted for testing must be representative of the Harvest Batch or Production Batch being tested. A violation of this sub-paragraph (A)(3) shall be considered a license violation affecting public safety and the person who commits adulteration or alteration of Sample Increments or Test Batches commits a class 2 misdemeanor and may be punished as provided in section 18-1.3-501, C.R.S.

4. Timing of Sample Increments for Harvest Batches and Production Batches. A Licensee shall not collect Sample Increments or submit Test Batches for testing until the Test Batch has completed all required steps and is in its final form as outlined in the standard operating procedures of the Licensee submitting the Test Batch, with the exception of packaging and labeling requirements which shall comply with Rule 3-1025.

    a. The following examples illustrate various methods, which are not limited to those listed herein, that a Licensee's standard operating procedures may include to verify a Test Batch completed all required steps and is in its final form pursuant to this Rule:

        i. The Licensee's standard operating procedures may include procedures that ensure the addition of all Ingredients or Additives has occurred and that the Harvest Batch or Production Batch associated with the Test Batch is completely ready to be packaged pending results of testing required by these Rules. This also includes creating Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;

        ii. For a Production Batch of Concentrate, the Licensee's standard operating procedure may include procedures that ensure the entire Production Batch associated with the Test Batch has completed all sifting, extracting, purging, winterizing, and steps to remove plant pigments and ensuring the addition of all Ingredients and Additives has occurred.

        iii. For a Production Batch of Regulated Marijuana Product, the Licensee's standard operating procedure may include procedures that ensure the addition of all Ingredients and Additives has occurred and the Production Batch associated with the Test Batch is completely ready to be packaged pending results of testing required by these Rules.

    b. A Test Batch from a Harvest Batch or Production Batch shall be packaged and labeled according to Series 3-1025 prior to Transfer to a Regulated Marijuana Testing Facility.

    c. This Rule 4-110(A)(4) does not apply for the submission of Test Batches submitted for R&D testing.

5. Vaporizer Delivery Device. This subsection (A)(5) is effective January 1, 2022. Retail Marijuana Concentrate that has been placed into a Vaporizer Delivery Device must be sampled and tested using a methodology that allows the laboratory to analyze the emission of the contents of the Vaporizer Delivery Device.

B. Designated Test Batch Collector Training, Documentation, and Designation.

1. Required Sample Increment Collection Training. To become a Designated Test Batch Collector an Owner Licensee or Employee Licensee involved in the Sample Increment Collection of Regulated Marijuana must be designated by a manager or Owner Licensee as such and must also complete either in-house training provided by the Regulated Marijuana Business or training from a third-party vendor. Nothing in this rule requires a Designated Test Batch Collector to be employed by the Regulated Marijuana Business making the designation.

2. Designated Test Batch Collection Training Required Topics. The training required to become a Designated Test Batch Collector must include at least the following topics:

a. Part 4–100 Series Rules - Regulated Marijuana Testing Program;

b. The Marijuana Business's standard operating procedures on creating a Sampling Plan and Test Batches, and the CDPHE's Sampling Procedures.

c. "Guidance on Marijuana Sampling Procedures" Training Video or an equivalent training covering the following subjects:

i. Introduction to Sample Increment Collection:

A. Cross contamination as it relates to Sample Increment Collection;

B. Sample Increment Collection and how it works;

C. Sample Increment Collection documentation and record keeping requirements;

D. Penalties for Sample Increment or Test Batch adulteration or alteration;

E. Use of and disinfection of the Designated Test Batch Collection Area; and

F. Use of the Sample Plan.

3. Documentation of Designated Test Batch Collector Training. Any individual receiving the Designated Test Batch Collector training must sign and date a document which shall be maintained by the Regulated Marijuana Business as a business record pursuant to Rule 3-905. The document must acknowledge the following:

a. The identity of the Person that created the training, such as the Regulated Marijuana Business or a third-party vendor; and

b. That all required topics of the training identified in this Rule have been reviewed and understood by the Owner Licensee or Employee Licensee.

C. Test Batch Collection Requirements.

1. Required Minimum of Two Test Batch Collectors. At a minimum, two Designated Test Batch Collectors shall be involved in the collection of Sample Increments such that at least one Designated Test Batch Collector is responsible for collecting the Sample Increments and another Designated Test Batch Collector is responsible for reviewing documentation associated with the collection of Sample Increments in a timely manner and prior to any Transfer of the Production Batch or Harvest Batch from which Sample Increments were collected. This review can be completed in person or may be completed remotely by reviewing image(s) of the Test Batch and associated documentation.

2. Sample Plan Required. A Designated Test Batch Collector must establish a Sample Plan consistent with the Regulated Marijuana Business's Standard Operating Procedure for Sample Increment Collection. At a minimum, a Sample Plan must include the following:

a. The date, amount or weight, and specific location for each Sample Increment collected;

b. Identification of and acknowledgements from all Designated Test Batch Collectors involved in the Sample Increment Collection; and

c. If applicable, the strain name(s) for each Harvest Batch from which Sample Increments are collected.

D. Minimum Number of Sample Increments Per Test Batch Submission. These sampling rules shall apply until such time as the State Licensing Authority revises these rules to implement a statistical sampling model. Unless a greater amount is required to comply with these rules or is required by a Regulated Marijuana Testing Facility to perform all requested testing, each Test Batch of Regulated Marijuana must contain at least the number of Sample Increments prescribed by this Section.

1. A Test Batch of Regulated Marijuana must be packaged and labeled according to Rule 3-1025.

2. The minimum number of Sample Increments required to be collected for each Test Batch from a Harvest Batch of Retail Marijuana or Medical Marijuana shall be determined by Table 4-110.D.2.T.

3. The minimum number of Sample Increments required to be collected for each Test Batch from a Production Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Audited Product and Alternative Use Product shall be determined by Table 4-110.D.2.T.

a. The Retail Marijuana Products Manufacturer or Medical Marijuana Products Manufacturer shall determine what constitutes a “Serving” and thus how many Servings are contained in a Production Batch of Regulated Marijuana Product, except that no serving of Edible Retail Marijuana Product can contain more than 10mg of active THC

b. Because all Test Batches of Regulated Marijuana Product, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana are required to be submitted for testing in their final form, in the event the required number of Sample Increments does not match up within a finished package, the manufacturer must increase the number of Sample Increments collected for the Test Batch such that only finished packages of Regulated Marijuana Products, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana are submitted for testing. For example, if a Production Batch of 4000 chocolate bars is manufactured, with each bar containing 100 mg THC and 10 servings per bar, the Production Batch would contain 40,000 Sample Increments which would require collection of at least 33 Sample Increments per Test Batch. But in this case, the manufacturer would have to collect 40 Sample Increments for testing (4 complete chocolate bars in final form).

c. No matter how small the Production Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana a minimum of two finished packages in final form must be submitted for a Test Batch.

4. The minimum number of Sample Increments required to be collected for each Test Batch from a Production Batch of Retail Marijuana Concentrate or Medical Marijuana Concentrate shall be determined by Table 4-110.D.2.T.

a. Because all Test Batches of Retail Marijuana Concentrate and Medical Marijuana Concentrate are required to be submitted for testing in their final form, in the

event the required number of Sample Increments does not match up with the number of Sample Increments in a finished package, the manufacturer must increase the number of Sample Increments collected for the Test Batch such that only finished packages of Marijuana Concentrate are submitted for testing. For example, if a Production Batch of 4,000 Vaporizer Delivery Devices is manufactured, with each Vaporizer Delivery Device containing 500 milligrams of Marijuana Concentrate, the Production Batch would contain 2,000 grams of Marijuana Concentrate, which would require collection of at least 15 Sample Increments per Test Batch. But in this case, the manufacturer would have to collect 16 Sample Increments for testing (8 vaporizer Delivery Devices in final form).

b. No matter how small the Production Batch of Retail Marijuana Concentrate or Medical Marijuana Concentrate, a minimum of two finished packages must be submitted for a Test Batch.

Table 4-110.D.2.T

Minimum Number of Sample Increments Required to be Collected per Test Batch	**Regulated Marijuana (Sample Increment = 0.5 grams)**		
	Total Weight of Harvest Batch (lbs)	Total Weight of Harvest Batch (grams)	**Minimum Weight of Test Batch (grams)**
5	0.000 -0.999	0.0 -453.5	**2.50**
8	1.00 -9.999	453.6 -4535.9	**4.00**
15	10.000 -19.999	4536.0 - 9071.8	**7.50**
22	20.000 -39.999	9071.9 - 18143.6	**11.00**
33	40.000 -99.999	18143.7 - 45359.2	**16.50**
43	100.000 - 199.999	45359.3 - 90718.4	**21.50**
53	200.000 - 499.999	90718.5 -226796.1	**26.50**
80	500 or more	226796.2 or more	**40.00**

Minimum Number of Sample Increments Required to be Collected per Test Batch	**Regulated Marijuana Concentrate (Sample Increment = 0.25 g)**		
	Total Weight of Production Batch (lbs)	Total Weight of Production Batch (grams)	**Minimum Weight of Test Batch (grams)**
5	0.000 -0.999	0.0-453.5	**1.25**
8	1.00 - 1.999	453.6-907.1	**2.00**

15	2.00 - 4.999	907.2-2267.9	**3.75**
22	5.000 - 14.999	2268.0-6803.8	**5.50**
33	15.000 – 49.999	6803.9-22679.6	**8.25**
43	50.000 – 99.999	22679.7-45359.2	**10.75**
53	100.000 – 249.999	45359.3-113398.0	**13.25**
80	250 or more	113398.1 or more	**20.00**

Minimum Number of Sample Increments Required to be Collected per Test Batch	**Regulated Marijuana Products (Sample Increment = 1 Serving)**				
	Number of Servings within Production Batch	**Minimum Number of Units for a Test Batch for a 5-Serving Unit***	**Minimum Number of Units for a Test Batch for a 10-Serving Unit***	**Minimum Number of Units for a Test Batch for a 20-Serving Unit***	**Minimum Number of Units for a Test Batch for a 100-Serving Unit***
5	0 - 99	**2**	**2**	**2**	**2**
8	100 - 999	**2**	**2**	**2**	**2**
15	1000 - 4999	**3**	**2**	**2**	**2**
22	5000 - 9999	**5**	**3**	**2**	**2**
33	10000 - 49999	**7**	**4**	**2**	**2**
43	50000 - 99999	**9**	**5**	**3**	**3**
53	100000 - 249999	**11**	**6**	**3**	**3**
80	250000 or more	**16**	**8**	**4**	**4**
*Other serving amounts per unit are acceptable. These are provided as examples.					

Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana		
Minimum	**Number of Pre-**	**Minimum Number of Pre-Rolls for a Test Batch when each Pre-Roll is**

Number of Sample Increments Required to be Collected per Test Batch	Rolls within the Production Batch	< or = 0.39 g	0.40g to 0.50g	0.51g to 0.75g	0.76g - 1.00g	1.01g - 2.00g	2.01g - 3.00g	3.01g +
5	0 - 99	5	4	3	2	2	2	2
8	100 - 999	8	5	4	3	2	2	2
15	1000 - 4999	15	10	8	5	4	2	2
22	5000 - 9999	22	14	11	8	6	3	2
33	10000 - 49999	33	21	17	11	9	5	3
43	50000 - 99999	43	27	22	15	11	6	4
53	100000 - 249999	53	34	26	18	14	7	5
80	250000 or more	80	50	40	27	20	10	7

E. Regulated Marijuana Testing Facility Selection. Unless otherwise restricted or prohibited by these rules or ordered by the State Licensing Authority, a Regulated Marijuana Business may select which Medical Marijuana Testing Facility or Retail Marijuana Testing Facility will test a Test Batch made up of Sample Increments collected pursuant to this Rule. However, the Division may elect, at its sole discretion, to assign a Regulated Marijuana Testing Facility to which a Regulated Marijuana Business must submit for testing any Test Batch made up of Sample Increments collected pursuant to this Rule.

F. ~~Industrial~~ Hemp Product Sampling Procedures. Absent sampling and testing standards established by the Colorado Department of Public Health and Environment for the sampling and testing of ~~Industrial~~ Hemp Product, a Person Transferring a~~n Industrial~~ Hemp Product to a Licensee pursuant to the Marijuana Code and these Rules shall comply with the sampling and testing standards set forth in these 4-100 Series Rules – Regulated Marijuana Testing Program and as required by these Rules.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish the portion of the Division's mandatory testing and sampling program that is applicable to Regulated Marijuana Businesses, and specifically Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities. While the Marijuana Code requires the State Licensing Authority to establish acceptable limits of potential contaminants, it also requires the State Licensing Authority to enact a plus or minus 15

percent potency variance, which is also included in this rule. This Rule 4-115 was previously Rules M and R 712, 1 CCR 212-1 and 1 CCR 212-2.

4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program

A. Division Authority. The Division may require that a Test Batch be submitted to a specific Regulated Marijuana Testing Facility for testing to verify compliance, perform investigations, compile data or address a public health and safety concern.

1. Independent Third Party Review. The Division may require Regulated Marijuana to undergo an independent third-party review to verify that the Regulated Marijuana does not pose a threat to public health and safety when the Division, in consultation with the Colorado Department of Public Health and Environment, has objective and reasonable grounds to believe and finds, upon a full investigation, one of the following:

a. The Regulated Marijuana contains one or more substances known to cause harm; or

b. The Regulated Marijuana contains one or more substances that could be toxic as consumed or applied in accordance with the intended use.

2. The fact that Regulated Marijuana contains marijuana shall not constitute grounds to require an independent third-party review. Ingredients Generally Recognized as Safe by the U.S. Food & Drug Administration or that are regulated by the U.S. Food & Drug Administration under the Dietary Supplement Health and Education Act of 1994 that are included in Edible Medical Marijuana Product or Edible Retail Marijuana Product shall not constitute grounds to require an independent third-party review.

3. Quarantine. In addition to any other remedies provided by law, the Division may immediately quarantine Regulated Marijuana pursuant to Rule 4-135(A) in any one of the following circumstances:

a. The Division has objective and reasonable grounds to believe and finds, upon a full investigation, that a Regulated Marijuana Business has been guilty of deliberate and willful violations of these rules;

b. The Regulated Marijuana or Alternative Use Product poses a potential threat to public health and safety;

c. The Division has received one or more reports of an adverse event related to Regulated Marijuana or Alternative Use Product. For purpose of this Rule, adverse event means any untoward medical occurrence associated with the use of Regulated Marijuana or Alternative Use Product—this could include any unfavorable and unintended sign (including hospitalization, emergency department visit, doctor's visit, abnormal laboratory finding), symptom, or disease temporally associated with the use of a Regulated Marijuana or Alternative Use Product;

d. The Division determines the independent third-party audit submitted pursuant to Rules 5-325(B) or 6-325(B) does not meet the requirements of Rules 5-325 or 6-325; or

e. The Regulated Marijuana Products Manufacturer has violated or is not in compliance with all of the requirements in Rules 5-325 or 6-325.

4. Any quarantine pursuant to subparagraph (A)(3) above shall remain in effect unless the Regulated Marijuana undergoes an independent third-party review to verify the Regulated Marijuana does not pose a risk to public health and safety.

5. For the purpose of this Rule, full investigation means a reasonable ascertainment of the underlying facts on which the agency action is based.

B. Standard Minimum Weight of Test Batches and Photo Documentation.

1. Standard Minimum Weight of Test Batches.

a. Regulated Marijuana and Regulated Marijuana Concentrate. A Medical Marijuana Testing Facility must establish a standard minimum weight of Medical Marijuana and Medical Marijuana Concentrate, and a Retail Marijuana Testing Facility must establish a standard minimum weight of Retail Marijuana and Retail Marijuana Concentrate that must be included in a Test Batch for every type of test that it conducts.

b. Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana. Regulated Marijuana Testing Facilities must establish a standard number of Samples required to be included in each Test Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana for every type of test that it conducts. *See* Rule 4-110 – Regulated Marijuana Testing Program – Sampling Procedures.

2. Photo Documentation of Test Batches.

a. A Regulated Marijuana Testing Facility shall digitally photograph each Test Batch it receives to document the Sample Increments collected, condition of the Test Batch, and compliance with these rules.

b. The Regulated Marijuana Testing Facility must maintain the digital photographs of each Test Batch as business records. *See* Rule 3-905 - Required Business Records.

c. Upon request by the Division, a Regulated Marijuana Testing Facility must provide copies of the digital photographs of Test Batches within seven days of the request unless a different deadline is agreed to.

C. Rejection of Test Batches.

1. A Regulated Marijuana Testing Facility shall not accept a Test Batch that is smaller than its standard minimum amount.

2. A Regulated Marijuana Testing Facility shall not accept a Test Batch that does not contain the minimum number and weight of Sample Increments, or the Regulated Marijuana Testing Facility has reason to believe it was not collected in accordance with Test Batch collection requirements in Rule 4-110.

3. Effective July 1, 2023, if a Regulated Marijuana Testing Facility suspects or has reason to suspect a Sample Increment or Test Batch has been adulterated, the Regulated Marijuana Testing Facility must:

a. Notify the Division; and

b. Quarantine the Sample Increment or Test Batch for a minimum of 48 hours from the time of notification to the Division before proceeding with any testing.

D. Permissible Levels of Contaminants. If Regulated Marijuana is found to have a contaminant in levels exceeding those established as permissible under this Rule, then it shall be considered to have failed contaminant testing. Notwithstanding the permissible levels established in this Rule, the Division reserves the right to determine, upon good cause and reasonable grounds, that a particular Test Batch presents a risk to the public health or safety and therefore shall be considered to have failed a contaminant test.

1. Microbials (Bacteria, Fungus)

Substance	**Acceptable Limits**	**Product to be Tested**
–Shiga-toxin producing *Escherichia coli* (STEC)*- Bacteria	Absent in 1 g	• Regulated Marijuana flower, shake, and trim (other than wet whole plant allocated for extraction); • Regulated Marijuana Products (other than Audited Product); • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana; • Physical Separation-Based, Heat/Pressure-Based, and Food-Based Medical Marijuana Concentrate; • Physical Separation-Based, Heat/Pressure-Based, and Food-Based Retail Marijuana Concentrate; • ~~Industrial~~ Hemp Products; • Pressurized Metered Dose Inhalers; • Vaporizer Delivery Device; • Solvent-Based Medical Marijuana Concentrate produced through Remediation; • Solvent-Based Retail Marijuana Concentrate produced through Remediation; • Solvent-Based Medical Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Solvent-Based Retail Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Re-testing of Regulated Marijuana flower, shake, and trim that has undergone Decontamination.
Salmonella species* – Bacteria	Absent in 1 g	
*Aspergillus (A. fumigatus, A. flavus, A. niger, A. terreus)***	Absent in 1 g	
Total Yeast and Mold	< 1.0×10^4 Colony Forming Unit (CFU) per 1 ml or 1 g	

	≤ 1.0 x 10^1 CFU/ml or ≤ 1.0 x 10^1 CFU/g	Audited Product: administration by metered dose nasal spray or vaginal administration
	≤ 1.0 x 10^2 CFU/ml or ≤ 1.0 x 10^2 CFU/g	Audited Product: rectal administration
Total aerobic microbial count	≤ 1.0 x 10^2 CFU/ml or ≤ 1.0 x 10^2 CFU/g	Audited Product: administration by metered dose nasal spray or vaginal administration
	≤ 1.0 x 10^3 CFU/ml or ≤ 1.0 x 10^3 CFU/g	Audited Product: rectal administration
Staphylococcus aureus	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray or vaginal administration
Pseudomonas aeruginosa	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray or vaginal administration
Bile tolerant gram negative bacteria	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray
Candida albicans	Absent in 1 ml or 1 g	Audited Product: vaginal administration

*The Regulated Marijuana Testing Facility shall contact the Colorado Department of Public Health and Environment when STEC and Salmonella are detected beyond the acceptable limits.

** Regulated Marijuana Products with intended use for oral consumption or skin and body products are exempt from required aspergillus testing.

1.5 Water Activity

Substance	**Acceptable Limits**	**Product to be Tested**
Water Activity	0.65 aW	• Regulated Marijuana flower shake, and trim (other than wet whole plant); • Retesting of Regulated Marijuana flower, shake, and trim that has undergone Decontamination; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana.

2. Mycotoxins

Substance	**Acceptable Limits**	**Product to be Tested**
Aflatoxins (B1, B2, G1, and G2)	< 20 Parts Per Billion (PPB)	• Solvent-Based Medical

	(total of B1 + B2 + G1 + G2)	Marijuana Concentrate manufactured from Medical Marijuana flower or trim that failed microbial testing; • Solvent-Based Retail Marijuana Concentrate manufactured from Retail Marijuana flower or trim that failed microbial testing; • Solvent-Based Medical Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Solvent-Based Retail Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Regulated Marijuana flower, shake, and trim that has undergone Decontamination.
Ochratoxin A	< 20 PPB	

3. Residual Solvents

Substance	**Acceptable Limits**	**Product to be Tested**
Acetone	< 1,000 Parts Per Million (PPM)	• Solvent-Based Medical Marijuana Concentrate; • Solvent-Based Retail Marijuana Concentrate; • ~~Industrial~~ Hemp Product (if a solvent was used)
Butanes	< 1,000 PPM	
Ethanol***	< 1,000 PPM	
Heptanes	< 1,000 PPM	
Isopropyl Alcohol	< 1,000 PPM	
Propane	< 1,000 PPM	
Benzene**	< 2 PPM	
Toluene**	< 180 PPM	
Pentane	< 1,000 PPM	
Hexane**	< 60 PPM	
Total Xylenes (m,p, o-xylenes)**	< 430 PPM	
Methanol**	< 600 PPM	
Ethyl Acetate	< 1000 PPM	
Any other solvent not permitted for use pursuant to Rules 5-315 and 6-315.	None Detected	

** Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use per Rule 6-315, limits have been listed here accordingly.

***Note: Solvent-Based Medical Marijuana Concentrate and Solvent-Based Retail Marijuana Concentrate that exceeds the acceptable limit for ethanol may only be used in Medical Marijuana Concentrate or Medical Marijuana Product, or Retail Marijuana Concentrate or Retail Marijuana Product, which intended use is oral consumption, skin and body products, a vaporizer delivery device, pressurized metered dose inhaler, or Audited Product.

4. Elemental Impurities

Substance	**Acceptable Limits Based on Intended Use**	**Product to be Tested**
Elemental Impurities (Arsenic, Cadmium, Lead and Mercury)	**Inhaled Product or Audited Product: administration by metered dose nasal spray** Lead – Max Limit: < .5 PPM Arsenic – Max Limit: < 0.2 PPM Cadmium – Max Limit: < 0.2 PPM Mercury – Max Limit: < 0.1 PPM	• Regulated Marijuana flower, shake, trim, and wet whole plant; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Medical Marijuana Concentrate; • Physical Separation-Based, Food-Based, Heat/Pressure-Based and Solvent Based Retail Marijuana Concentrate; • Regulated Marijuana Product; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana; • Pressurized Metered Dose Inhaler; • Vaporizer Delivery Device; • Audited Product; • ~~Industrial~~ Hemp Product
	Topical and/or Transdermal Lead – Max Limit: < 10 PPM Arsenic – Max Limit: < 3 PPM Cadmium – Max Limit: < 3 PPM Mercury – Max Limit: < 1 PPM	
	Oral Consumption or Audited Product: rectal or vaginal administration Lead – Max Limit: < 1 PPM Arsenic – Max Limit: < 1.5 PPM Cadmium – Max Limit: < 0.5 PPM Mercury – Max Limit: < 1.5 PPM	

5. Pesticides.

a. Effective January 1, 2023, the following pesticides are currently subject to required testing, at the associated action limits:

Substance	**Action Limit**	**Product to be Tested**
Abamectin (Avermectins: B1a & B1b)	< 0.1 PPM	• Regulated Marijuana flower, shake, trim, and wet whole plant; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Medical Marijuana Concentrate;
Azoxystrobin	< 0.02 PPM	
Bifenazate	< 0.02 PPM	
Etoxazole	< 0.02 PPM	
Imazalil	< 0.05 PPM	
Imidacloprid	< 0.02 PPM	
Malathion	< 0.02 PPM	

Myclobutanil	< 0.02 PPM	• Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Retail Marijuana Concentrate; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana. • ~~Industrial~~ Hemp Product
Permethrin (mix of isomers)	< 0.5 PPM	
Spinosad (Mixture of A and D)	< 0.1 PPM	
Spiromesifen	< 3.0 PPM	
Spirotetramat	< 0.02 PPM	
Tebuconazole	< 0.05 PPM	

b. Effective July 1, 2023, the following pesticides will be subject to required testing, at the associated action limits:

Substance	**Action Limit**	**Product To Be Tested**
Abamectin (Avermectins B1a & B1b)	< 0.1 PPM	• Regulated Marijuana flower, shake, trim, and wet whole plant; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Medical Marijuana Concentrate; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Retail Marijuana Concentrate; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana. • ~~Industrial~~ Hemp Product
Azoxystrobin	< 0.02 PPM	
Bifenthrin	< 1.0 PPM	
Bifenazate	< 0.02 PPM	
Boscalid	< 0.02 PPM	
Carbaryl	< 0.05 PPM	
Chlorpyrifos	< 0.04 PPM	
Clothianidin	< 0.05 PPM	
Cyhalothrin lambda	< 0.25 PPM	
Dichlorvos	< 0.1 PPM	
Dimethoate	< 0.02 PPM	
Dinotefuran	< 0.1 PPM	
Diuron	< 0.125 PPM	
Etoxazole	< 0.02 PPM	
Imazalil	< 0.05 PPM	
Imidacloprid	< 0.02 PPM	
Malathion	< 0.02 PPM	
Metalaxyl	< 0.02 PPM	
Myclobutanil	< 0.02 PPM	
Permethrins	< 0.5 PPM	
Propiconazole	< 0.1 PPM	
Pyriproxyfen	< 0.01 PPM	

Spinosad	< 0.1 PPM	
Spiromesifen	< 3.0 PPM	
Spirotetramat	< 0.02 PPM	
Tebuconazole	< 0.05 PPM	
Thiabendazole	< 0.02 PPM	
Thiamethoxam	< 0.02 PPM	

c. Effective July 1, 2024, the following pesticides will be subject to required testing, at the associated action limits:

Substance	**Action Limit**	**Product To Be Tested**
Abamectin (Avermectins B1a & B1b)	< 0.1 PPM	• Regulated Marijuana flower, shake, trim, and wet whole plant; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Medical Marijuana Concentrate; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Retail Marijuana Concentrate; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana. • ~~Industrial~~ Hemp Product
Acephate	< 0.02 PPM	
Acequinocyl	< 0.03 PPM	
Acetamiprid	< 0.1 PPM	
Aldicarb	< 1.0 PPM	
Allethrin	< 0.2 PPM	
Atrazine	< 0.025 PPM	
Azoxystrobin	< 0.02 PPM	
Benzovindiflupyr	< 0.02 PPM	
Bifenazate	< 0.02 PPM	
Bifenthrin	< 1.0 PPM	
Boscalid	< 0.02 PPM	
Buprofezin	< 0.02 PPM	
Carbaryl	< 0.05 PPM	
Carbofuran	< 0.02 PPM	
Chlorantraniliprole	< 0.02 PPM	
Chlorphenapyr	< 0.05 PPM	
Chlorpyrifos	< 0.04 PPM	
Clofentezine	< 0.02 PPM	
Clothianidin	< 0.05 PPM	
Coumaphos	< 0.02 PPM	
Cyantraniliprole	< 0.02 PPM	
Cyfluthrin	< 0.2 PPM	
Cyhalothrin lambda	< 0.25 PPM	
Cypermethrin	< 0.3 PPM	

Cyprodinil	< 0.25 PPM	
Daminozide	< 0.1 PPM	
Deltamethrin	< 0.5 PPM	
Diazinon	< 0.02 PPM	
Dichlorvos	<.1~~01~~ PPM	
Dimethoate	< 0.02 PPM	
Dimethomorph	< 0.05 PPM	
Dinotefuran	< 0.1 PPM	
Diuron	< 0.125 PPM	
Dodemorph	< 0.05 PPM	
Endosulfan sulfate	< 0.05 PPM	
Endosulfan-alpha	< 0.2 PPM	
Endosulfan-beta	< 0.05 PPM	
Ethoprophos	< 0.02 PPM	
Etofenprox	< 0.05 PPM	
Etoxazole	< 0.02 PPM	
Etridiazole	< 0.03 PPM	
Fenhexamid	< 0.125 PPM	
Fenoxycarb	< 0.02 PPM	
Fenpyroximate	< 0.02 PPM	
Fensulfothion	< 0.02 PPM	
Fenthion	< 0.02 PPM	
Fenvalerate	< 0.1 PPM	
Fipronil	< 0.06 PPM	
Flonicamid	< 0.05 PPM	
Fludioxonil	< 0.02 PPM	
Fluopyram	< 0.02 PPM	
Hexythiazox	< 0.01 PPM	
Imazalil	< 0.05 PPM	
Imidacloprid	< 0.02 PPM	
Iprodione	< 1.0 PPM	
Kinoprene	< 0.5 PPM	
Krosoxim-methyl	< 0.02 PPM	
Malathion	< 0.02 PPM	
Metalaxyl	< 0.02 PPM	

Methiocarb	< 0.02 PPM	
Methomyl	< 0.05 PPM	
Methoprene	< 2.0 PPM	
Mevinphos	< 0.05 PPM	
MGK-264	< 0.05 PPM	
Myclobutanil	< 0.02 PPM	
Naled	< 0.1 PPM	
Novaluron	< 0.05 PPM	
Oxamyl	< 3.0 PPM	
Paclobutrazol	< 0.02 PPM	
Parathion-methyl	< 0.05 PPM	
Permethrins	< 0.5 PPM	
Phenothrin	< 0.05 PPM	
Phosmet	< 0.02 PPM	
Pirimicarb	< 0.02 PPM	
Prallethrin	< 0.05 PPM	
Propiconazole	< 0.1 PPM	
Propoxur	< 0.02 PPM	
Pyraclostrobin	< 0.02 PPM	
Pyridaben	< 0.05 PPM	
Pyriproxyfen	< 0.01 PPM	
Quintozene	< 0.02 PPM	
Resmethrin	< 0.1 PPM	
Spinetoram	< 0.02 PPM	
Spinosad	< 0.1 PPM	
Spirodiclofen	< 0.25 PPM	
Spiromesifen	< 3.0 PPM	
Spirotetramat	< 0.02 PPM	
Spiroxamine	< 0.1 PPM	
Tebuconazole	< 0.05 PPM	
Tebuenozide	< 0.02 PPM	
Teflubenzuron	< 0.05 PPM	
Tetrachlorvinphos	< 0.02 PPM	
Tetramethrin	< 0.1 PPM	
Thiabendazole	< 0.02 PPM	

Thiacloprid	< 0.02 PPM	
Thiamethoxam	< 0.02 PPM	
Thiophanate-methyl	< 0.05 PPM	
Trifloxystrobin	< 0.02 PPM	

6. Other Contaminants. If any Test Batch is found to contain levels of any microorganism, chemical, elemental impurity, or pesticides that could be toxic if consumed or present, then the Regulated Marijuana Testing Facility must notify the Regulated Marijuana Business and the Division, in accordance with subparagraph (7) of this Rule, and initiate corrective actions with all parties.

7. Division Notification. A Regulated Marijuana Testing Facility must notify the Division by timely input in the Inventory Tracking System if a Test Batch is found to contain levels of a contaminant not listed within this Rule that could be injurious to human health if consumed. *See* Rule 3-825.

E. Potency Testing.

1. Cannabinoids Potency Profiles. A Regulated Marijuana Testing Facility may test and report results for any Cannabinoid provided the test is conducted in accordance with the Regulated Marijuana Testing Facility's standard operating procedure.

2. Reporting of Results.

a. For potency tests on Regulated Marijuana, Regulated Marijuana Concentrate, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana, results must be reported by listing a single percentage concentration for each Cannabinoid that represents an average of all Samples within the Test Batch. This includes reporting the Total THC in addition to each Cannabinoid required in Rule 4-125.

b. For potency tests conducted on Regulated Marijuana Product, whether conducted on each individual Production Batch or via a Reduced Testing Allowance per Rule 4-125, results must be reported by listing the total number of milligrams contained within a single Regulated Marijuana Product unit for sale for each Cannabinoid and stating whether the THC content is homogenous as defined in Paragraphs 3 and 4 of this subparagraph E.

c. Effective Date for Reporting D8-THC, D10-THC, and Exo-THC. Requirements for reporting potency test results for D8-THC, D10-THC, and Exo-THC shall take effect on July 1, 2022.

3. Failed Potency Tests for Medical Marijuana Product.

a. If the Cannabinoid content of Medical Marijuana Product is determined not to be homogeneous, then it shall be considered to have failed potency testing. A Production Batch of Medical Marijuana Product shall be considered homogeneous if a minimum of a total of four servings from two packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label. A Production Batch of Medical Marijuana Product shall be considered homogenous if a minimum of a total of four servings from four individual single serve packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label.

i. The four servings must also test within the allowed potency variance set forth in subparagraph E(5) of this Rule 4-115.

ii. Any Cannabinoid that makes up less than 10 percent of the total amount of Cannabinoids in the Medical Marijuana Product shall not be subject to the requirements set forth in this subparagraph (E)(3).

b. If an individually packaged Edible Medical Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (E)(5) of this Rule 4-115 shall apply to potency testing.

4. Failed Potency Tests for Retail Marijuana Product.

a. If the Cannabinoid content of Retail Marijuana Product is determined not to be homogeneous, then it shall be considered to have failed potency testing. A Production Batch of Retail Marijuana Product shall be considered homogeneous if a minimum of a total of four servings from two packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label. A Production Batch of Retail Marijuana Product shall be considered homogenous if a minimum of a total of four servings from four individual single serve packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label.

i. The four servings must also test within the allowed potency variance set forth in subparagraph E(5) of this Rule 4-115.

ii. Any Cannabinoid that makes up less than 10 percent of the total amount of Cannabinoids in the Retail Marijuana Product shall not be subject to the requirements set forth in this subparagraph (E)(4).

b. If an individually packaged Edible Retail Marijuana Product is determined to have more than 100 milligrams of THC within it, then the Test Batch shall be considered to have failed potency testing. If an individually packaged Edible Retail Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. If a single serving in an individually packaged Edible Retail Marijuana Product is determined to have more than 10 milligrams of THC then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (E)(5) of this Rule 4-115 shall apply to potency testing.

5. Potency Variance. Regulated Marijuana Product provided to the Regulated Marijuana Testing Facility must comply with the following potency variance:

a. For Regulated Marijuana Product with a Target Potency or making a potency claim for any cannabinoid of more than 2.5 milligrams per serving the potency variance shall differ no more than plus or minus 15 percent.

b. For Regulated Marijuana Product with a Target Potency or making a potency claim for any cannabinoid of 2.5 milligrams or less per serving the potency

variance shall differ no more than the greater of plus or minus 0.5 mg or 40 percent per serving.

F. Testing Regulated Marijuana Ready for Transfer. All tests must occur at the time the Regulated Marijuana is ready for Transfer to another Regulated Marijuana Business, according to the required steps outlined in the standard operating procedures of the Licensee submitting the Test Batch.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-120

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the contaminant testing and related Reduced Testing Allowance portion of the Division's Regulated Marijuana sampling and testing program. This Rule 4-120 was previously Rules M and R 1501, 1 CCR 212-1 and 1 CCR 212-2.

4-120 – Regulated Marijuana Testing Program: Contaminant Testing

A. Contaminant Testing Required.

1. A Regulated Marijuana Business shall not Transfer or process Regulated Marijuana, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Regulated Marijuana Concentrate or Regulated Marijuana Product unless Test Batches from each Harvest Batch or Production Batch from which that Regulated Marijuana was derived has been tested by a Regulated Marijuana Testing Facility for contaminants and passed all contaminant tests required by this Rule, except as permitted in Rule 5-205(C), 6-205(C), or the cultivation or production process has achieved a Reduced Testing Allowance under this Rule.

Please Note: *The following are stakeholder proposals from the Quarterly Science and Policy Forum that the MED is continuing to evaluate and seek feedback on.*

B. Reduced Testing Allowance and Ongoing Testing – Contaminant Testing.

1. Regulated Marijuana. A Regulated Marijuana Cultivation Facility's cultivation process may achieve a Reduced Testing Allowance for contaminant testing if every Harvest Batch that it produced during at least a six-week period (minimum 42 days) but no longer than a 12-week period (maximum 84 days) passed all contaminant tests required by Paragraph (C) of this Rule. This must include at least six Test Batches. The period begins from the date of the creation of the first Harvest Batch that passed reduced testing allowance testing. A Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator can achieve a Reduced Testing Allowance for all contaminants listed in paragraph (C) of this Rule at the same time or separately for each contaminant.

a. Visual Microbial Growth. If a Regulated Marijuana Cultivation Facility is aware that a Harvest Batch contains visual microbial contamination, the Regulated Marijuana Cultivation Facility shall subject the Harvest Batch to microbial contaminant testing pursuant to Rule 4-120(C)(1). If the Test Batch fails testing, then the Harvest Batch shall be subject to the requirements in Rule 4-135(C). The Licensees must also follow Rule 4-120(F)(2).

b. Effective January 1, 2025, to achieve a Reduced Testing Allowance for microbial contaminants, a Regulated Marijuana Cultivation Facility must be in compliance with the above requirements and must pay for and undergo an audit by a third-party certifying body accredited to ISO/IEC 17065, using auditors with established competencies in GAPs and HACCP, to verify compliance with the requirements of Rules 3-310, 3-330, 3-336, 6-210(D), and 6-210(E).

i. The Division may attempt to mutually agree upon the selection of the independent consultant with a Regulated Marijuana Business. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

ii. The Regulated Marijuana Business will be responsible for all costs associated with the independent audit.

2. Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana. A Regulated Marijuana Business's production process may achieve a Reduced Testing Allowance for contaminant testing if for a particular type of Regulated Marijuana Concentrate, Regulated Marijuana Product, or Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana every Production Batch that it produced during at least a four-week period (minimum 28 days) but no longer than an eight-week period (maximum 56 days) passed all contaminant tests required by Paragraph (C) of this Rule. This must include Test Batches from at least four Production Batches. This period begins from the date of the creation of the first Production Batch that passed reduced testing allowance testing. If a Regulated Marijuana Concentrate or Regulated Marijuana Product is manufactured using a different extraction process or infusion process or using any different Additives or Botanically Derived Compounds, it will be considered a different type of Regulated Marijuana Concentrate or Regulated Marijuana Product and therefore must separately achieve a Reduced Testing Allowance. If Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana is produced using different input materials, such as a different marijuana category (e.g. flower or trim), different wrapper materials, different processes, or different equipment, they must achieve separate Reduced Testing Allowances.

3. Reduced Testing Allowances are Effective for One Year. Once a Regulated Marijuana Business has successfully achieved a Reduced Testing Allowance for each of the contaminants listed in paragraph (C) of this Rule, the Reduced Testing Allowance is effective for one year (365 days inclusive, or 366 days inclusive during a leap year) from the date of the first passing harvest date or production date required to satisfy the Reduced Testing Allowance requirements.

4. Regulated Marijuana Ongoing Contaminant Testing. After successfully achieving a Reduced Testing Allowance, once every 30 days a Regulated Marijuana Business shall subject at least one Harvest Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period the Regulated Marijuana Business does not possess a Harvest Batch that is ready for testing, The Regulated Marijuana Business must subject its first Harvest Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Regulated Marijuana. If a Harvest Batch subject to ongoing contaminant testing fails contaminant testing, the Regulated Marijuana Business shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing contaminant testing pursuant to this Rule 4-120 shall be subject to the requirements in Rule 4-110. *See* Rule 4-110(A) – Collection of Samples.

a. The Division may reduce the frequency of ongoing contaminant testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity

to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

b. If the Licensee fails to comply with paragraph (B)(4) of this Rule, the Regulated Marijuana Business is no longer authorized a Reduced Testing Allowance.

5. Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana Ongoing Contaminant Testing. After successfully achieving a Reduced Testing Allowance, once every 30 days the Regulated Marijuana Business shall subject at least one Production Batch of each particular type of Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana, or Infused Pre-Rolled Marijuana for which it has achieved a Reduced Testing Allowance to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period the Regulated Marijuana Business does not possess a Production Batch that is ready for testing, the Regulated Marijuana Business must subject its first Production Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Regulated Marijuana. If a Production Batch submitted for ongoing contaminant testing fails contaminant testing, the Regulated Marijuana Business shall follow the procedure in Paragraph (F)(2) of this Rule.

a. The Division may reduce the frequency of ongoing contaminant testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

b. If the Licensee fails to comply with paragraph (B)(5) of this Rule, the Regulated Marijuana Business is no longer authorized under a Reduced Testing Allowance.

6. Reduced Testing Allowance Certification Fee. Effective January 1, 2024, a Licensee seeking to obtain Reduced Testing Allowance must first pay the fee in Rule 2-205.

a. A Licensee who chooses to pay the Reduced Testing Allowance fee must also submit an attestation form that at a minimum requires the Licensee attest they understand these testing Rules and requirements.

b. Upon the Division's receipt of payment of the fee and submission of the attestation form, a Licensee may exercise the privileges of Reduced Testing Allowance for a 12-month period.

c. If a Licensee is required, under these Rules, to reauthorize the Reduced Testing Allowance within the 12-month period, the Licensee is not required to pay a new fee.

d. Reduced Testing Allowance Certification can be renewed annually.

C. Required Contaminant Tests.

1. Microbial Contaminant Testing. Harvest Batches of Regulated Marijuana, flower, shake, and trim, re-testing of Regulated Marijuana flower, shake, and/or trim that has undergone Decontamination, Production Batches of Physical Separation-, Heat/Pressure-, or Food-Based Medical Marijuana Concentrate, Production Batches of Physical Separation-, Heat/Pressure-, or Food-Based Retail Marijuana Concentrate, Solvent-Based Medical

Marijuana Concentrate produced through Remediation, Solvent-Based Retail Marijuana Concentrate produced through Remediation, Regulated Marijuana Product, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, ~~Industrial~~ Hemp Products, Pressurized Metered Dose Inhalers, Vaporizer Delivery Devices, and Audited Product must be tested for microbial contamination by a Regulated Marijuana Testing Facility at the frequency established by Paragraphs (A) and (B) of this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and/or amounts present of microbial contaminants listed in Rule 4-115(D)(1): Shiga-toxin producing Escherichia coli (STEC)*- Bacteria, *Aspergillus (A. fumigatus, A. flavus, A. niger, A. terreus),* Salmonella species* – Bacteria, Total Yeast and Mold, Total aerobic microbial count, *Staphylococcus Aureus, Pseudomonas aeruginosa, Bile tolerant gram negative bacteria and Candida albicans*.

a. Effective Date for Required *Aspergillus* Testing. Requirements for *Aspergillus* testing pursuant to this rule shall take effect on July 1, 2022.

1.5 Water Activity Testing. Harvest Batches of Regulated Marijuana, flower, shake, and trim (other than wet whole plant), re-testing of Regulated Marijuana flower, shake, and/or trim that has undergone Decontamination, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana at the frequency established by Paragraphs (A) and (B) of this Rule.

2. Residual Solvent Contaminant Testing. Production Batches of Solvent-Based Medical Marijuana Concentrate, Solvent-Based Retail Marijuana Concentrate, and Audited Product that contains any Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate produced by a Regulated Marijuana Products Manufacturer must be tested by a Regulated Marijuana Testing Facility for residual solvent contamination at the frequency established by Paragraphs (A) and (B) of this Rule. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of acetone, butane, ethanol, heptanes, isopropyl alcohol, propane, benzene*, toluene*, pentane, hexane*, methanol*, ethyl acetate, and total xylenes* (m, p, o – xylenes).

* Note: These solvents are not approved for use. Testing is required for these solvents due to their possible presence in the solvents approved for use per Rule 5-315 and 6-315.

3. Mycotoxin Contaminant Testing. As part of Remediation, each Production Batch of Solvent-Based Medical Marijuana Concentrate produced by a Medical Marijuana Products Manufacturer or Solvent-Based Retail Marijuana Concentrate produced by a Regulated Marijuana Products Manufacturer from Regulated Marijuana that failed microbial contaminant testing produced must be tested by a Regulated Marijuana Testing Facility for mycotoxin contamination. Each failed Harvest Batch of Regulated Marijuana flower, shake, and/or trim and each failed Production Batch of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana that has undergone Decontamination must be tested by a Regulated Marijuana Testing Facility for mycotoxin contamination. Each Production Batch of Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contamination must be tested for mycotoxin contamination. The mycotoxin contaminant test must include, but need not be limited to, testing to determine the presence of, and amounts present of, aflatoxins (B1, B2, G1, and G2) and ochratoxin A. This is in addition to all other contaminant testing required by this Paragraph (C). This contaminant test cannot be exempt from testing by a Reduced Testing Allowance in accordance with subparagraph (B)(2) of this Rule, except Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contamination pursuant to Rule 4-121.

4. ~~p~~Pesticide Contaminant Testing. Harvest Batches of Regulated Marijuana, Production Batches of Regulated Marijuana Concentrate, Production Batches of Pre-Rolled Marijuana, and Production Batches of Infused Pre-Rolled Marijuana must be tested for Pesticide contamination by a Regulated Marijuana Testing Facility at the frequency established by this Rule 4-120(A) and (B). The Pesticide contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, the Pesticides listed in Rule 4-115(D~~E~~)(5).

   a. Effective Date for Required Pesticide Contaminant Testing for Production Batches of Regulated Marijuana Concentrate: Requirements for Pesticide contaminant testing for Production Batches of Regulated Marijuana Concentrate pursuant to this rule shall take effect on July 1, 2021.

5. Elemental Impurities Testing.

   a. Each Harvest Batch and Production Batch of Regulated Marijuana must be tested for elemental impurities by a Regulated Marijuana Testing Facility at the frequency established in paragraphs (A) and (B) of this Rule. The elemental impurities test must include, but need not be limited to, testing to determine the presence of, and amounts present of, arsenic, cadmium, lead, and mercury.

   b. Emissions Testing. This subsection (C)(5)(b) is effective January 1, 2022. Each Harvest Batch and Production Batch of Regulated Marijuana Concentrate in a Vaporized Delivery Device must be tested for elemental impurities via emissions testing by a Regulated Marijuana Testing Facility at the frequency established in subparagraphs (A) and (B) of this Rule. The elemental impurities test must include, but need not be limited to, testing to determine the presence and amounts of arsenic, cadmium, lead, and mercury.

D. Additional Required Tests. The Division may require additional tests to be conducted on a Harvest Batch or Production Batch prior to a Regulated Marijuana Cultivation Facility or Regulated Marijuana Products Manufacturer Transferring or processing any Regulated Marijuana from that Harvest Batch or Production into a Regulated Marijuana Concentrate or Regulated Marijuana Product. Additional tests may include, but need not be limited to, screening for Pesticide, chemical contaminants, biological contaminants, or other types of microbials, molds, elemental impurities, or residual solvents.

E. Exemptions.

1. Medical Marijuana Concentrate.

   a. A Medical Marijuana Products Manufacturer who combines multiple Production Batches of Solvent-Based Medical Marijuana Concentrate into a Production Batch of Solvent-Based Medical Marijuana Concentrate shall be considered exempt from residual solvent testing pursuant to this Rule only if all original Production Batches passed residual solvent testing. This does not apply if a solvent, Additive, or any other Ingredient was introduced during the combination of the Production Batches.

   b. A Production Batch of Medical Marijuana Concentrate shall be considered exempt from contaminant testing requirements pursuant to this Rule if the Medical Marijuana Products Manufacturer that produced it does not Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Medical Marijuana Product, except that a Solvent-Based Medical Marijuana Concentrate must still be submitted for residual solvent contaminant

testing and Medical Marijuana Concentrate must still be submitted for pesticide contaminant testing. The manufactured Medical Marijuana Product shall be subject to mandatory testing under this Rule.

2. Retail Marijuana Concentrate.

a. A Retail Marijuana Products Manufacturer or Accelerator Manufacturer who combines multiple Production Batches of Solvent-Based Retail Marijuana Concentrate into a Production Batch of Solvent-Based Retail Marijuana Concentrate shall be considered exempt from residual solvent testing pursuant to this Rule only if all original Production Batches passed residual solvent testing. This does not apply if a solvent, Additive or any other Ingredient was introduced during the combination of the Production Batches.

b. A Production Batch of Retail Marijuana Concentrate shall be considered exempt from contaminant testing requirements pursuant to this Rule if the Retail Marijuana Products Manufacturer that produced it does not Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Retail Marijuana Product, except that a Solvent-Based Retail Marijuana Concentrate must still be submitted for residual solvent contaminant testing and Retail Marijuana Concentrate must still be submitted for pesticide contaminant testing. The manufactured Retail Marijuana Product shall be subject to testing under this Rule.

3. Regulated Marijuana Product. A Regulated Marijuana Business that produces Regulated Marijuana Products with intended use for oral consumption or skin and body products, is exempt from aspergillus testing as required by these 4-100 Series Rules.

F. Events Requiring Re-Authorization for a Reduced Testing Allowance - Contaminants.

1. Material Change. If a Licensee makes a Material Change to its cultivation or production process or its standard operating procedures , then it must have the first five Harvest Batches or Production Batches produced using the new procedures tested for all of the contaminants required by Paragraph (C) of this Rule regardless of whether its process has previously achieved a Reduced Testing Allowance regarding contaminants. If any of those tests fail, then the Regulated Marijuana Business's process must achieve a new Reduced Testing Allowance.

a. Pesticide or other Agricultural Substances. It is a Material Change if a Regulated Marijuana Cultivation Facility begins using a new or different Pesticide or other agricultural substances (e.g. nutrients, fertilizers) during its cultivation process.

b. Solvents. It is a Material Change if a Regulated Marijuana Products Manufacturer begins using a new or different solvent or combination of solvents or changes any parameters for equipment related to the solvent purging process, including but not limited to, time, temperature, or pressure.

c. Cultivation. It is a Material Change if a Regulated Marijuana Cultivation Facility begins using a new or different method for any material part of the cultivation process, including, but not limited to, changing from one growing medium to another.

d. Environmental Conditions. It is a Material Change if a Regulated Marijuana Cultivation Facility changes parameters associated with environmental conditions, including temperature, humidity, or lighting.

e. Cleaning and Sanitation. It is a Material Change if a Regulated Marijuana Cultivation Facility makes changes to cleaning or sanitation processes.

f. Inputs and Contact Surfaces. It is a Material Change if a Regulated Marijuana Cultivation Facility changes materials that have direct contact with product components, including but not limited to, ingredients, additives, or hardware such as Vaporizer Delivery Devices.

g. Testing Required Prior to Transfer or Processing. When a Harvest Batch or Production Batch is required to be submitted for testing pursuant to this Rule, the Licensee that produced it may not Transfer or process Regulated Marijuana, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Regulated Marijuana Concentrate or Regulated Marijuana Product unless the Harvest Batch or Production Batch passes all required testing.

2. Failed Contaminant Testing and Reduced Testing Allowance. Failed contaminant testing may constitute a violation of these rules.

a. If a Test Batch is required to be tested by these Rules or required to be tested by the Division pursuant to Rule 4-120(A) and fails contaminant testing, the Licensee shall follow the procedures in Rule 4-135(B) for any Inventory Tracking System package, Harvest Batch, or Production Batch from which the failed Sample was taken.

b. The Licensee shall also submit Test Batches from three new Harvest Batches or Production Batches of the Regulated Marijuana for contaminant testing by a Regulated Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails contaminant testing, the Licensee shall achieve a new Reduced Testing Allowance for contaminants.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-121

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish requirements and exemptions for contaminant testing for wet whole plant.

4-121 – Regulated Marijuana Testing Program: Wet Whole Plant Contaminant Testing

A. Microbial Contaminant Testing. A Regulated Marijuana Cultivation Facility shall not Transfer wet whole plant or process wet whole plant into Regulated Marijuana Concentrate unless Test Batches from each Harvest Batch of Regulated Marijuana wet whole plant were tested for microbial contamination by a Regulated Marijuana Testing Facility and passed all microbial contaminant tests except as permitted in Rules 5-205(C), 6-205(C), or the cultivation process has achieved a Reduced Testing Allowance under this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and/or amounts present of microbial contaminants listed in Rule 4-115(D)(1): Shiga-toxin producing Escherichia coli (STEC)*- Bacteria, *Aspergillus (A. fumigatus, A. flavus, A. niger, A. terreus),* Salmonella species* – Bacteria, Total Yeast and Mold.

B. Reduced Testing Allowance and Ongoing Testing – Microbial Contaminant Testing. A Regulated Marijuana Cultivation Facility's cultivation process for wet whole plant shall be deemed acceptable for a Reduced Testing Allowance for microbial contaminant testing if every Harvest Batch of wet whole plant that it produced during at least a three-week (minimum 21 days) period but no longer than a 12-week (maximum 84 days) period passed all microbial contaminant tests required by this Rule. This must include at least six Test Batches. A Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator can achieve a Reduced Testing Allowance for contaminants listed in this Rule 4-121.

C. Reduced Testing Allowances are Effective for One Year. Once a Regulated Marijuana Business has successfully achieved a Reduced Testing Allowance for a contaminant test, the Reduced Testing Allowance is effective for one year (365 days inclusive, or 366 days inclusive during a leap year) from the date of the first passing harvest date or required to satisfy the Reduced Testing Allowance requirements.

D. Regulated Marijuana Ongoing Contaminant Testing. After successfully achieving a Reduced Testing Allowance, once every 30 days a Regulated Marijuana Cultivation Facility shall subject at least one Harvest Batch of wet whole plant to microbial contaminant testing. If during any 30-day period a Regulated Marijuana Cultivation Facility does not possess a Harvest Batch of wet whole plant that is ready for testing, the Regulated Marijuana Cultivation Facility must subject its first Harvest Batch of wet whole plant that is ready for testing to a microbial contaminant testing prior to Transfer or processing of the Regulated Marijuana wet whole plant. If a Harvest Batch of wet whole plant subject to ongoing contaminant testing fails contaminant testing, the Regulated Marijuana Cultivation Facility shall follow the procedure in Paragraph (F)(2) of Rule 4-120. Ongoing contaminant testing pursuant to this Rule shall be subject to the requirements in Rule 4-110. *See* Rule 4-110(A) – Collection of Samples.

1. The Division may reduce the frequency of ongoing contaminant testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

2. If the Licensee fails to comply with Paragraph (D) of this Rule, the Regulated Marijuana Cultivation Facility is no longer authorized a Reduced Testing Allowance.

E. Testing Exemptions for Wet Whole Plant.

1. Harvest Batches of Regulated Marijuana wet whole plant are exempt from required water activity testing.

2. Harvest Batches of Regulated Marijuana wet whole plant is exempt from required microbial contaminant testing if a Regulated Marijuana Cultivation Facility Transfers the Regulated Marijuana wet whole plant for the purposes of extraction to a Regulated Marijuana Business with at least one identical Controlling Beneficial Owner and in accordance with this Rule. If a Regulated Marijuana wet whole plant Harvest Batch is not tested for microbial contamination, each resulting Regulated Marijuana Concentrate Production Batch shall be tested for microbial contamination pursuant to Rule 4-120.

F. Regulated Marijuana Concentrate Produced from Wet Whole Plant That Was Not Tested for Microbial Contaminants.

1. Required Testing. Each Production Batch of Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contaminants in accordance with

the exemption in paragraph (E)(2) of this Rule must be tested for microbial contaminants and mycotoxins. In addition, the Regulated Marijuana Concentrate must be tested in accordance with Rule 4-120 for other contaminants, including pesticides, elemental impurities, and residual solvents if applicable.

2. Regulated Marijuana Concentrate Produced from Wet Whole Plant Not Tested for Microbial Contamination. A Regulated Marijuana Business that produces Regulated Marijuana Concentrate may achieve a Reduced Testing Allowance for a Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contamination, subject to the following requirements:

   a. Qualification Form. The Regulated Marijuana Business that produces Regulated Marijuana Concentrate from wet whole plant not tested for microbial contamination shall obtain a completed qualification form from the Regulated Marijuana Business that cultivated the wet whole plant. The qualification form must detail the following information related to the cultivation of the wet whole plant:

      i. Implemented quality management systems;

      ii. Record keeping;

      iii. Notification of Material Change;

      iv. Notification of a wet whole plant microbial Test Batch failure;

      v. Cultivation and post-harvest procedures;

      vi. Cleaning; and

      vii. Corrective action and preventative action.

   b. Completion Required. The Regulated Marijuana Business that wishes to Transfer the wet whole plant that was not tested for microbial contamination must provide a completed qualification form detailing the information listed above.

   c. Approval. The Regulated Marijuana Business that receives a Transfer of wet whole plant is responsible for ensuring it conforms with specified approval requirements, which shall include but is not limited to the following:

      i. The receiving Regulated Marijuana Business has confirmed it has not received notification by the Regulated Marijuana Cultivation Facility of a Material Change to its cultivation process;

      ii. The receiving Regulated Marijuana Business has inspected the wet whole plant Harvest Batch for visual microbial contamination. If visual microbial contamination is identified in the Harvest Batch of wet whole plant, the Licensee shall subject the Harvest Batch to microbial contaminant testing pursuant to Rule 4-121. If the Test Batch fails testing, then the Harvest Batch shall be subject to the requirements in Rule 4-135(C).; and

      iii. The receiving Regulated Marijuana Business has obtained evidence of compliance with testing requirements for the wet whole plant and proof of any Reduced Testing Allowances, if applicable~~appliable~~.

d. Origin Verification. Verification of the Regulated Marijuana Business that cultivated the wet whole plant used to manufacture the Regulated Marijuana Concentrate.

3. Recordkeeping Requirements. A Regulated Marijuana Business shall maintain copies of documents and other records evidencing compliance with this Rule as part of its business books and records. *See* Rule 3-905 – Business Records Required.

G. Pesticide and Elemental Impurities Testing for Regulated Marijuana Wet Whole Plant. Each Harvest Batch of Regulated Marijuana wet whole plant must be tested for Pesticide and Elemental Impurities testing in accordance with Rule 4-120.

H. Events Requiring Re-Authorization for a Reduced Testing Allowance. A Regulated Marijuana Cultivation Facility must follow Rule 4-120 for any events that would require a Re-Authorization for a Reduced Testing Allowance. That may include a failed test or a Material Change described in Rule 4-120 (F). The Licensee must act in accordance with Rule 4-120 (F)(2) if either scenario occurs.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-125

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the potency testing and related Reduced Testing Allowance portion of the Division's Regulated Marijuana sampling and testing program. This Rule 4-125 was previously Rules M and R 1503, 1 CCR 212-1 and 1 CCR 212-2.

4-125 – Regulated Marijuana Testing Program: Potency Testing

A. Potency Testing – General.

1. Test Batches. A Test Batch submitted for potency testing may only be comprised of sample increments that are of the same strain of Medical Marijuana or Retail Marijuana or from the same Production Batch of Medical Marijuana Concentrate or Medical Marijuana Product, or from the same Production Batch of Retail Marijuana Concentrate or Retail Marijuana Product, or from the same Production Batch of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana.

2. Cannabinoid Profile. A potency test conducted pursuant to this Rule must at least determine the level of concentration of D8-THC, D9-THC, D-10 THC, Exo-THC, THCA, CBD, CBDA, and CBN.

B. Potency Testing for Regulated Marijuana.

1. Initial Potency Testing. A Regulated Marijuana Cultivation Facility must have potency tests conducted by a Regulated Marijuana Testing Facility on four Harvest Batches, created a minimum of one week apart, for each strain of Regulated Marijuana that it cultivates. *See* Rule 4-105(B).

a. The first potency test must be conducted on each strain prior to the Regulated Marijuana Cultivation Facility Transferring or processing into a Medical Marijuana Concentrate any Medical Marijuana of that strain, or into a Retail Marijuana Concentrate any Retail Marijuana of that strain.

b. All four potency tests must be conducted on each strain no later than December 1, 2014 or six months after the Regulated Marijuana Cultivation Facility begins cultivating that strain, whichever is later.

2. Ongoing Potency Testing. After the initial four potency tests, a Regulated Marijuana Cultivation Facility shall have each strain of Regulated Marijuana that it cultivates tested for potency at least once per quarter.

a. If the Licensee fails to comply with paragraph (B)(2) of this Rule, the Regulated Marijuana Cultivation Facility is no longer authorized for a Reduced Testing Allowance.

C. Potency Testing for Regulated Marijuana Concentrate except Kief.

1. A Medical Marijuana Cultivation Facility or a Medical Marijuana Products Manufacturer must have a potency test conducted by a Medical Marijuana Testing Facility on every Production Batch of Medical Marijuana Concentrate that it produces prior to Transferring or processing into a Medical Marijuana Product any of the Medical Marijuana Concentrate from that Production Batch.

2. A Retail Marijuana Cultivation Facility, Accelerator Cultivator, Retail Marijuana Products Manufacturer, or an Accelerator Manufacturer must have a potency test conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Concentrate that it produces prior to Transferring or processing into a Retail Marijuana Product any of the Retail Marijuana Concentrate from that Production Batch.

D. Repealed.

E. Potency Testing for Regulated Marijuana Product.

1. Potency Testing Required for Regulated Marijuana Product. A Regulated Marijuana Products Manufacturer shall have potency tests conducted by a Regulated Marijuana Testing Facility on every Production Batch of each type of Regulated Marijuana Product that it produces prior to Transferring any of the Regulated Marijuana Product from that Production Batch, unless the Regulated Marijuana Products Manufacturer has successfully achieved a Reduced Testing Allowance for potency and homogeneity for the particular type of Regulated Marijuana Product.

2. Required Tests. Potency and homogeneity tests conducted on Regulated Marijuana Product must determine the level of concentration of the required Cannabinoids and whether or not THC is homogeneously distributed throughout the product.

3. Partially Infused Regulated Marijuana Products. If only a portion of a Regulated Marijuana Product is infused with Regulated Marijuana, then the Regulated Marijuana Products Manufacturer must inform the Regulated Marijuana Testing Facility of exactly which portions of the Regulated Marijuana Product are infused and which portions are not infused.

E.1. Potency Testing Required for Pre-Rolled Marijuana.

1. A Regulated Marijuana Business shall have potency tests conducted by a Regulated Marijuana Testing Facility on every Production Batch of each type of Pre-Rolled Marijuana product that it produces prior to Transferring or selling any of the Pre-Rolled Marijuana from that Production Batch if the Regulated Marijuana Business is using multiple strains from different sources (e.g. self-grown source, wholesale source) and/or selecting only a part of the Harvest Batch(es) that is not representative of the entire Harvest Batch each time they produce a certain type of Pre-Rolled Marijuana (e.g. using only the shake/trim out of a Harvest Batch).

2. If each type of Pre-Rolled Marijuana is created Using select parts of a single strain (e.g. flower only, shake/trim only) or a specific ratio of strains from specified sources (e.g. self-grown source, wholesale source) defined by the Regulated Marijuana Business' standard operating procedures, a Regulated Marijuana Business shall have potency tests conducted according to paragraph (E.1)(2)(a) and (b) of this Rule by a Regulated Marijuana Testing Facility for each type of Pre-Rolled Marijuana product that it produces prior to Transferring or selling any of the Pre-Rolled Marijuana from a Production Batch.

    a. Initial Potency Testing. Initial potency tests shall be conducted by a Regulated Marijuana Testing Facility on four Production Batches, created a minimum of one week apart, for each type of Pre-Rolled Marijuana that is created using a single strain or a specific ratio of strains defined by the Regulated Marijuana Business' standard operating procedures.

    b. Ongoing Potency Testing. After the initial four potency tests, ongoing potency tests shall be conducted by a Regulated Marijuana Testing Facility at least once per quarter for each type of Pre-Rolled Marijuana that is created using a single strain or a specific ratio of strains defined by the Regulated Marijuana Business' standard operating procedures.

3. A Regulated Marijuana Business shall be considered exempt from potency testing if the Pre-Rolled Marijuana Production Batch uses a single strain and uses all parts of the Harvest Batch that were included in the potency testing of the Harvest Batch prior to creating the Pre-Rolled Marijuana Production Batches. In this case, the potency test results of the Harvest Batch shall be used for the Pre-Rolled Marijuana Production Batch.

4. Production Batches of Pre-Rolled Marijuana are exempt from homogeneity testing.

E.2. Potency Testing Required for Infused Pre-Rolled Marijuana.

1. A Regulated Marijuana Business shall have potency tests conducted by a Regulated Marijuana Testing Facility on every Production Batch of Infused Pre-Rolled Marijuana product that it produces prior to Transferring any of the Infused Pre-Rolled Marijuana from that Production Batch.

2. Production Batches of Infused Pre-Rolled Marijuana are exempt from homogeneity testing.

F. Reduced Testing Allowance - Potency and Homogeneity.

1. A Retail Marijuana Products Manufacturer or Accelerator Manufacturer may achieve a Reduced Testing Allowance for potency and homogeneity for each type of Retail Marijuana Product it manufactures.

    a. For Edible Retail Marijuana Products a potency test result that is within 15 percent of the target potency will count towards a Reduced Testing Allowance.

i. For Edible Retail Marijuana Products that contain 2.5 milligrams of THC or less per serving, a potency test result that is within the greater of plus or minus 0.5 milligrams or 40 percent per serving will count towards a Reduced Testing Allowance.

2. A Medical Marijuana Products Manufacturer may achieve a Reduced Testing Allowance for potency and homogeneity for each type of non-Edible Medical Marijuana Product and each type of Edible Medical Marijuana Product that it manufactures.

a. For Edible Medical Marijuana Products that contain 100 milligrams of THC or less per Container, a potency test result that is within 15 percent of the target potency will count towards a Reduced Testing Allowance.

i. For Edible Medical Marijuana Products that contain 2.5 milligrams of THC or less per serving and less than 100 milligrams of THC per Container, a potency test result that is within the greater of plus or minus 0.5 milligrams or 40 percent per serving will count towards a Reduced Testing Allowance.

b. For Edible Medical Marijuana Products that contain between 101 and 500 milligrams of THC per Container, a potency test result that is within 10 percent of the target potency will count towards a Reduced Testing Allowance.

c. For Edible Medical Marijuana Products that contain 501 milligrams of THC or more per Container, a potency test result that is within 5 percent of the target potency will count towards a Reduced Testing Allowance.

3. A Regulated Marijuana Products Manufacturer's production process for a particular type of Regulated Marijuana Product shall be deemed acceptable for a Reduced Testing Allowance for potency and homogeneity testing if every Production Batch that it produces for that particular type of Regulated Marijuana Product during at least a four-week period but no longer than an eight-week period passes all potency and homogeneity tests required by Rule 4-125. This must include at least four Test Batches.

4. Expiration of a Reduced Testing Allowance. A Regulated Marijuana Products Manufacturer is required to achieve a new Reduced Testing Allowance every 12 months from the date the Reduced Testing Allowance is achieved (365 days inclusive, or 366 days inclusive during a leap year from the date of the first Production Batch utilized to initiate establishing a Reduced Testing Allowance), after which point the Reduced Testing Allowance expires. When the Reduced Testing Allowance expires, the Regulated Marijuana Business shall comply with the requirements of this Rule.

5. Regulated Marijuana Product Ongoing Potency and Homogeneity Testing. After successfully achieving a Reduced Testing Allowance, once per quarter a Regulated Marijuana Products Manufacturer shall subject at least one Production Batch of each type of Medical Marijuana Product or Retail Marijuana Product that it produces to potency and homogeneity testing required by Paragraph (D) of this Rule. If during any quarter the Regulated Marijuana Products Manufacturer does not possess a Production Batch that is ready for testing, the Licensee must subject its first Production Batch that is ready for testing to the required potency and homogeneity testing prior to Transfer or processing of the Regulated Marijuana. If a Test Batch submitted for ongoing potency and homogeneity testing fails potency and homogeneity testing, the Licensee shall follow the procedure in Paragraph (H) of this Rule. Ongoing potency and homogeneity testing pursuant to this Rule 4-125 shall be subject to the requirements in Rule 4-110. *See* Rule 4-110(A) – Collection of Samples.

a. The Division may reduce the frequency of ongoing potency and homogeneity testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing potency and homogeneity testing to the Licensee's last electronic mailing address provided to the Division.

b. If the Licensee fails to comply with paragraph (F)(5) of this Rule, the Regulated Marijuana Cultivation Facility is no longer authorized for a Reduced Testing Allowance.

G. Exemption. Any Regulated Marijuana that will be allocated for extraction in the Inventory Tracking System shall be considered exempt from potency testing pursuant to this Rule.

H. Events Requiring Re-Authorization for a Reduced Testing Allowance - Potency and Homogeneity - Regulated Marijuana Product.

1. Material Change. If a Regulated Marijuana Products Manufacturer elects to achieve a Reduced Testing Allowance for any Regulated Marijuana Products for potency and homogeneity and it makes a Material Change to its production process for that particular type of Regulated Marijuana Product, then the Regulated Marijuana Products Manufacturer shall achieve a new Reduced Testing Allowance.

a. New Equipment. It is a Material Change if the Regulated Marijuana Products Manufacturer begins using new or different equipment for any material part of the production process.

b. Repealed.

c. Testing Required Prior to Transfer. When a Production Batch is required to be submitted for testing pursuant to this Rule, the Regulated Marijuana Products Manufacturer that produced it may not Transfer Regulated Marijuana Product from that Production Batch unless it obtains a passing test.

2. Failed Potency Testing. Failed potency testing may constitute a violation of these rules.

a. If a Test Batch is required to be tested by these Rules or required to be tested by the Division pursuant to Rule 4-115(A) and fails potency testing, the Regulated Marijuana Products Manufacturer shall follow the procedures in Rule 4-135(~~C~~E) for any Inventory Tracking System package or Production Batch associated with the failed Sample.

b. The Regulated Marijuana Products Manufacturer shall also submit Test Batches from three new Production Batches of the Regulated Marijuana Product t for potency testing by a Regulated Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails potency testing, the Regulated Marijuana Products Manufacturer shall achieve a new Reduced Testing Allowance.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-130

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules requiring Regulated Marijuana Businesses to cover certain costs associated with the Division's Regulated Marijuana Sampling and Testing Program. This Rule 4-130 was previously Rules M and R 1506, 1 CCR 212-1 and 1 CCR 212-2.

4-130 – Regulated Marijuana Testing Program: Costs

The cost for all sampling and tests conducted pursuant to these rules shall be the financial responsibility of the Regulated Marijuana Business that is required to submit the Sample for testing.

Basis and Purpose – 4-135

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division's Regulated Marijuana Sampling and Testing Program. This Rule 4-135 was previously Rules M and R 1507, 1 CCR 212-1 and 1 CCR 212-2.

4-135 – Regulated Marijuana Testing Program: Contaminated Product and Failed Test Results and Procedures

A. Quarantining of Product.

1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, or Inventory Tracking System package of Regulated Marijuana is contaminated or presents a risk to public safety, then the Division may require a Regulated Marijuana Business to quarantine it until the completion of the Division's investigation, which may include, but is not limited to, the receipt of any test results.

2. If a Regulated Marijuana Business is notified by any local or state agency, or by a Regulated Marijuana Testing Facility that a Test Batch failed a contaminant or potency testing, then the Regulated Marijuana Business shall quarantine any Regulated Marijuana from any Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch and must follow the procedures established pursuant to this Rule.

3. Except as provided by this Rule, Regulated Marijuana that has been quarantined pursuant to this Rule must be physically separated from all other inventory and the Licensee may not Transfer or further process the Regulated Marijuana.

4. In addition to any other method authorized by law, the Division may implement the quarantine through the Inventory Tracking System by (a) indicating failed test results and (b) limiting the Licensee's ability to Transfer the quarantined Regulated Marijuana unless otherwise permitted by these rules.

B. Failed Contaminant Testing: All Contaminant Testing Except Microbial and Water Activity Testing of Regulated Marijuana Flower, Trim, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana,

Pesticide Testing, and Elemental Impurities Testing of Regulated Marijuana Flower or Trim. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch failed contaminant testing (except microbial and water activity testing of Regulated Marijuana flower or trim, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana, Pesticide testing, and elemental impurities testing of Regulated Marijuana flower or trim), then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated With that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule 3-230 – Waste Disposal;

2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

    a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities;

    b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana or Regulated Marijuana Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, or Retail Marijuana Product;

    c. If one or both of the Test Batches do not pass contaminant testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch included in that Test Batch pursuant to Rule 3-230 – Waste Disposal.

3. The Regulated Marijuana Business may Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch that failed contaminant testing to another Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, or an Accelerator Manufacturer for Decontamination, if possible, and create two new Test Batches after Decontamination has occurred, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

    a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities;

    b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana or Regulated Marijuana Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, or Retail Marijuana Product;

c. If one or both of the Test Batches do not pass contaminant testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch included in that Test Batch pursuant to Rule 3-230 – Waste Disposal.

C. Failed Contaminant Testing: Microbial Testing of Regulated Marijuana Flower, Wet Whole Plant, Trim, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana flower, wet whole plant, trim, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana failed microbial testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 2-230 – Waste Disposal;

2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for microbial contaminant testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a mycotoxin and water activity test prior to Transfer. The mycotoxin and water activity testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed microbial testing. If a Test Batch fails mycotoxin or water activity testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (B) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

   a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.

   b. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

   c. If one or both of the Test Batches do not pass microbial testing, then the Regulated Marijuana Business must:

      i. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal;

      ii. Decontaminate and re-test in accordance with this Paragraph (C)(2); or

      iii. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch for Decontamination or Remediation pursuant to Paragraph (C)(3)(b) below.

3. In lieu of Decontamination pursuant to Paragraph (C)(2) above, the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages, Harvest Batches, and Production Batches associated with that failed Test Batch to a Regulated Marijuana Cultivation Facility for Decontamination, or may Transfer

such Regulated Marijuana to a Regulated Marijuana Products Manufacturer for Decontamination and/or Remediation. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana back to the originating Regulated Marijuana Business following the Decontamination procedures, then the originating Regulated Marijuana Business is responsible for all required testing. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana to a different Regulated Marijuana Business or further processes the Regulated Marijuana following Decontamination, then the receiving Regulated Marijuana Business that performed the Decontamination is responsible for all required testing.

a. Decontamination. The Regulated Marijuana Business may Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for microbial contaminant testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a mycotoxin and water activity test prior to Transfer. The mycotoxin and water activity testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed microbial testing. If a Test Batch fails mycotoxin or water activity testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (B) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

   i. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities

   ii. If both Test Batches pass the required microbial testing, then the Inventory Tracking System packages, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

   iii. If one or both of the Test Batches that were created from Harvest Batches or Production Batches pursuant to Paragraph (C)(3)(a) do not pass microbial testing, the Regulated Marijuana Business must either:

      A. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 Waste Disposal;

      B. Decontaminate and re-test in accordance with this paragraph;

      C. Attempt Remediation pursuant to Paragraph (C)(3)(b), except for Production Batches of Infused Pre-Rolled Marijuana; or

      D. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana for Decontamination or Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana for Remediation pursuant to Paragraph (C)(3)(b).

b. Remediation. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments. The new Test Batches are required to be re-tested for Microbial, Mycotoxin, and Water Activity contaminant testing. Such testing must comport with sampling procedures under Rule 4-110.

i. For Remediation, the Regulated Marijuana Business shall process the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

ii. The Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) – Regulated Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to microbial and mycotoxins contamination. Such testing must comport with the sampling procedures under Rule 4-110.

iii. If the Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) fails contaminant testing, the Regulated Marijuana Business shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate pursuant to Rule 3-230 – Waste Disposal.

4. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.

C.5. Failed Contaminant Testing: Water Activity Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana flower, trim, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana failed water activity testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 2-230 – Waste Disposal; or

2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for water activity testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a microbial contaminant test prior to Transfer. The microbial contaminant test is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed water activity testing. If a Test Batch fails microbial contaminant testing the Regulated Marijuana Business must

follow the failed contaminant testing procedures pursuant to Paragraph (C) above. Pursuant to Rule 4-120(E), wet whole plant is exempt from water activity testing.

a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.

b. If both Test Batches pass the required water activity testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

c. If one or both of the Test Batches do not pass water activity testing, then the Regulated Marijuana Business must:

i. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal;

ii. Decontaminate and re-test in accordance with this Paragraph (C.5)(2); or

iii. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch for Decontamination or Remediation pursuant to Paragraph (C)(3)(b) below.

3. In lieu of Decontamination pursuant to Paragraph (C.5)(2) above, the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages, Harvest Batches, or Production Batches associated with that failed Test Batch to a Regulated Marijuana Cultivation Facility for Decontamination, or may Transfer such Regulated Marijuana to a Regulated Marijuana Products Manufacturer for Decontamination and/or Remediation. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana back to the originating Regulated Marijuana Business following the Decontamination procedures, then the originating Regulated Marijuana Business is responsible for all required testing. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana to a different Regulated Marijuana Business or further process the Regulated Marijuana following Decontamination, then the receiving Regulated Marijuana Business that performed the Decontamination is responsible for all required testing.

a. Decontamination. The Regulated Marijuana Business may Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for water activity testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a microbial contaminant test prior to Transfer. The microbial contaminant testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed water activity testing. If a Test Batch fails microbial contaminant testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (C) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

i. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities

ii. If both Test Batches pass the required testing, then the Inventory Tracking System packages, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

iii. If one or both of the Test Batches that were created from Harvest Batches or Production Batches pursuant to Paragraph (C.5)(3)(a) do not pass water activity testing, the Regulated Marijuana Business must either:

A. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 Waste Disposal;

B. Decontaminate and re-test in accordance with this paragraph;

C. Attempt Remediation pursuant to Paragraph (C.5)(3)(b), except for Production Batches of Infused Pre-Rolled Marijuana; or

D. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana for Decontamination or Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana for Remediation pursuant to Paragraph (C.5)(3)(b).

b. Remediation. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments. The new Test Batches are required to be re-tested for Microbial, Mycotoxin, and Water Activity contaminant testing. Such testing must comport with sampling procedures under Rule 4-110.

i. For Remediation, the Regulated Marijuana Business shall process the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

ii. The Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) – Regulated Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to microbial and mycotoxins contamination. Such testing must comport with the sampling procedures under Rule 4-110.

iii. If the Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C.5)(3)(b) fails contaminant testing, the Regulated Marijuana Business shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate pursuant to Rule 3-230 – Waste Disposal.

4. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.

D. Failed Contaminant Testing: Pesticide Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch failed Pesticide testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal; or

2. Request that the Regulated Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule 4-110.

a. If both retesting analyses pass the required Pesticide testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana, Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

b. If one or both of the retesting analyses do not pass Pesticide testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal.

D.1. Failed Contaminant Testing: Elemental Impurities Testing of Regulated Marijuana Flower, Wet Whole Plant, and Trim. If a Regulated Marijuana Business is notified by the Division or a Testing Facility that a Test Batch of Regulated Marijuana flower, wet whole plant, or trim failed elemental impurities testing, then for each Inventory Tracking System package or Harvest Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 Waste Disposal.

2. Request that the Regulated Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule 4-110.

a. If both retesting analyses pass the required elemental impurities testing, then the Inventory Tracking System package or Harvest Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

b. If one or both of the retesting analyses do not pass elemental impurities testing, then the Regulated Marijuana Business must either destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 – Waste Disposal or Remediate the Inventory Tracking System package or Harvest Batch pursuant to Paragraph (3).

3. If the failed Test Batch is not deemed hazardous waste per the Resource Conservation and Recovery Act or other applicable federal, state, or local regulations, then the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages or Harvest Batch associated with that failed Test Batch to a Regulated Marijuana Products Manufacturer for Remediation.

a. The Regulated Marijuana Business that Transfers the Retail Marijuana that failed elemental impurities testing must comply with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.

b. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package or Harvest Batch associated with the failed Test Batch by processing it into a Regulated Marijuana Concentrate. The Regulated Marijuana Products Manufacturer is prohibited from adding any other Regulated Marijuana to the Regulated Marijuana Concentrate it manufactures pursuant to this Rule.

c. In addition to all applicable regulations, the Regulated Marijuana Products Manufacturer must comply with 3-230 (C)(1), 5-315(D)(9), and 6-315 (D)(9).

d. The Regulated Marijuana Concentrate that was manufactured pursuant to Paragraph (D.1)(3)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) Regulated Marijuana Testing Program Contaminant Testing, potency testing pursuant to Rule 4-125 - Regulated Marijuana Testing Program - Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to elemental impurities testing. Such testing must comport with the sampling procedures under Rule 4- 110.

e. For elemental impurities testing, the Regulated Marijuana Business must create two new Test Batches from the Remediated Production Batch, each containing the requisite number of Samples, and have those Test Batches tested. Such testing must comport with the sampling procedures under Rule 4-110.

i. A Licensee must either (1) submit both new Test Batches to the same Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Marijuana Testing Facilities.

ii. If both Test Batches pass the required elemental impurities testing, then the Inventory Tracking System package or Harvest Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

iii. If one or both of the Test Batches do not pass elemental impurities testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 - Waste Disposal.

f. All Production Batches undergoing Remediation for elemental impurities must be tested and are not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

4. Nothing in this Rule eliminates or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed elemental impurities testing from complying with the requirement to pay excise tax pursuant to article 28.8 of Title 39, C.R.S.

E. Failed Potency Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana Product failed potency testing, then for each Inventory Tracking System package or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule 3-230 – Waste Disposal; or

2. Attempt corrective measures, if possible, and create two new Test Batches each containing the requisite number of Samples, and have those Test Batches tested for the required potency test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.

b. If both new Test Batches pass potency testing, then the Inventory Tracking System package or Production Batch associated with each Test Batch may be Transferred.

c. If one or both of the Test Batches do not pass potency testing, then the Regulated Marijuana Products Manufacturer must destroy and document the destruction of Inventory Tracking System package or Production Batch pursuant to Rule 3-230 – Waste Disposal.

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Part 5 – Medical Marijuana Business License Types

5-100 Series – Medical Marijuana Stores

Basis and Purpose – 5-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(7), 44-10-313(4), 44-10-313(14), 44-10-401(2)(a)(I), 44-10-501, and 44-10-505, C.R.S. The purpose of this rule is to establish a Medical Marijuana Store's license privileges. This Rule 5-105 was previously Rule M 401, 1 CCR 212-1.

Please Note: *The following proposed revisions seek to align Medical Marijuana Store license privileges with revised Retail Marijuana Store and Accelerator Store license privileges as amended in HB 23-1279.*

5-105 – Medical Marijuana Store: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Medical Marijuana Business and Retail Marijuana Business – Shared Licensed Premises and Operational Separation, a Medical Marijuana Store may share a Licensed Premises with a commonly-owned Retail Marijuana Store. However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Authorized Sources of Medical Marijuana. A Medical Marijuana Store may only Transfer Medical Marijuana that was obtained from a Medical Marijuana Business.

C. Authorized Transfers. A Medical Marijuana Store may only Transfer Medical Marijuana to a patient, a primary caregiver, another Medical Marijuana Store, a Medical Marijuana Cultivation Facility, a Medical Marijuana Products Manufacturer, or a Medical Marijuana Testing Facility.

D. Samples Provided for Testing. A Medical Marijuana Store may provide Samples of its products to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

E. Authorized On-Premises Storage. A Medical Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

F. Authorized Marijuana Transport. A Medical Marijuana Store is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana so long as the place where transportation orders are taken and delivered is a licensed Medical Marijuana Business. Nothing in this Rule prevents a Medical Marijuana Store from transporting its own Medical Marijuana.

G. Performance-Based Incentives. A Medical Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

H. Authorized Transfers of ~~Industrial~~ Hemp Products. ~~This rule is effective July 1, 2020.~~ A Medical Marijuana Store may Transfer ~~Industrial~~ Hemp Product to a patient only after it has verified:

1. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Medical Marijuana Testing Facility; and

2. That the Person Transferring the ~~Industrial~~ Hemp Product to the Medical Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

I. Medical Marijuana Store Delivery Permit. A Medical Marijuana Store with a valid delivery permit may accept delivery orders and deliver Medical Marijuana to a patient who is 21 years of age or older, or the patient's parent or guardian who is also the patient's primary caregiver pursuant to Rule 3-615. A Medical Marijuana Store that does not possess a valid delivery permit cannot deliver Medical Marijuana to a patient, parent, or guardian.

J. Automated Dispensing Machines. A Medical Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to patients without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to patients.

K. Walk-up or Drive-Up Window. A Medical Marijuana Store may serve patients through a walk-up window or drive-up window pursuant to the requirements of this rule.

1. Modification of Premises Required. Before accepting orders for sales of Medical Marijuana to a patient through either a walk-up window or a drive-up window, a Medical Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or a drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

   a. Prior to accepting an order or Transferring Medical Marijuana to a patient, the Employee Licensee or Owner Licensee must physically view and inspect the patient's identification and the patient's registry identification card.

   b. The Medical Marijuana Store may accept internet or telephone orders or may accept orders from the patient at the walk-up or drive-up window.

   c. All orders received through a walk-up window or drive-up window must be placed by the patient from a menu. The Medical Marijuana Store may not display Medical Marijuana at the walk-up window or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods are permitted for payment for Medical Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Medical Marijuana Store's video surveillance must enable the recording of the patient's identity (and patient's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the patient's identification, registry identification card, and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. A Medical Marijuana Store utilizing a walk-up or drive-up window must ensure that all Medical Marijuana is packaged and labeled in accordance with Rules 3-1010 and Rule 3-1015 prior to Transfer to the patient.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Licensing Authority.

J. Sales over the Internet. A Medical Marijuana Store may accept orders and payment for Medical Marijuana over the internet.

1. Online Order Requirements.

a. Online orders must include the customer's name and date of birth.

b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:

i. A digital copy of the pregnancy warning required in Rule 5-120; and

ii. If accepting an order for Medical Marijuana Concentrate, the Medical Marijuana Store must also provide the educational resources required in Rule 5-115(C.5).

2. Transfer of Medical Marijuana to the Patient.

a. The patient or primary caregiver must be physically present on the Licensed Premises to take possession of Medical Marijuana.

b. The Medical Marijuana Store must verify the patient's or primary caregiver's physical identification matches the name and date of birth the patient or primary caregiver provided at the time of the order.

Basis and Purpose – 5-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), and 44-10-501, C.R.S. The purpose of this rule is to establish the requirements and processes applicable to a Medical Marijuana Store registering patients for primary store purposes. This Rule 5-110 was previously Rule M 402, 1 CCR 212-1.

5-110 – Registration of a Primary Medical Marijuana Store

A. Patient Designation Required. A Medical Marijuana Store may possess in the aggregate, only the amount of Medical Marijuana permitted by Rule 5-115 for each patient who has designated the Medical Marijuana Store as being his or her primary store. A patient's designation of a Medical Marijuana Store as his or her primary Medical Marijuana Store in accordance with these Rules establishes the Medical Marijuana Store registration requirements set forth in section 25-1.5-106(8)(f), C.R.S.

B. Change Only Allowed Every 30 Days. A Medical Marijuana Store shall not register a patient as being the patient's primary store if the patient has designated another Medical Marijuana Store as his or her primary store in the preceding 30 days. The Medical Marijuana Store and its employees must require a patient to sign in writing that he or she has not designated another Medical Marijuana Store as his or her primary store before including that patient's Medical Marijuana in its maximum allowed on-hand Medical Marijuana inventory calculation under Rule 5-115.

C. Notification to Former Medical Marijuana Store. A Medical Marijuana Store must maintain a copy of a written or electronic notification that it provided to a patient's former primary Medical Marijuana Store advising that the Medical Marijuana Store has been designated as the patient's new primary Medical Marijuana Store.

D. Documents Required. In addition to all records required to be maintained by Rule 3-905 – Business Records Required, the new primary Medical Marijuana Store shall maintain:

1. Written authorization from the patient;

2. A hard or electronic copy of the patient's registry card;

3. A copy of the patient's proof of identification; and.

4. The physician certification and, if authorized for sales exceeding the statutory daily limits the patient's uniform certification form.

E. Violation Affecting Public Safety. Notwithstanding the provisions in Rule 5-110(B), it may be considered a violation affecting public safety for a Medical Marijuana Store and its employees to become a patient's primary store when the patient already had designated one or more other Medical Marijuana Stores as his or her primary store.

Basis and Purpose – 5-115

The statutory authority for this includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), 44-10-501, and 44-10-505, 44-10-501(10) C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 14(4). The purpose of this rule is to clarify those acts that are prohibited, or limited in some fashion, by a licensed Medical Marijuana Store.

The sales limitations provision reflects the sales limitation imposed by statute. Clarifying the limitations on sales provides Medical Marijuana Stores and their employees with necessary information to avoid being complicit in a patient acquiring more Medical Marijuana than is lawful under the Colorado Constitution pursuant to Article XVIII, Subsection 14(4).

This Rule 5-115 was previously Rule M 403, 1 CCR 212-1.

5-115 – Medical Marijuana Sales: General Limitations or Prohibited Acts

A. Possession Limits. A Medical Marijuana Store may only possess at its Licensed Premises the number of ounces of Medical Marijuana (excluding Medical Marijuana Products and Medical Marijuana Concentrate) that equals the greater of: 1) twice the total, aggregate ounces of Medical Marijuana all of its registered patients are allowed to possess, or 2) the total, aggregate ounces of Medical Marijuana that the Medical Marijuana Store Transferred to patients in the thirty (30) previous calendar days. Under no circumstance shall a Medical Marijuana Store possess more Medical Marijuana than permitted by this subparagraph.

B. Medical Marijuana Products Manufacturers. A Medical Marijuana Store may also contract for the manufacture of Medical Marijuana Product with Medical Marijuana Products Manufacturer Licensees utilizing a contract as provided for in Rule 5-310 – Medical Marijuana Products Manufacturer: General Limitations or Prohibited Acts (Infused Product Contracts). Medical Marijuana distributed to a Medical Marijuana Products Manufacturer by a Medical Marijuana Store pursuant to such a contract for use solely in Medical Marijuana Product(s) that are returned to the contracting Medical Marijuana Store shall not be included for purposes of determining compliance with paragraph A.

B.5 Standard Operating Procedures. A Medical Marijuana Store must establish written standard operating procedures for the management and storage of Medical Marijuana inventory and the sale of Medical Marijuana to patients. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. A Medical Marijuana Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited

to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

C. Patient Sales Requirements. A Medical Marijuana Store shall comply with the sales and Inventory Tracking requirements in Rule 5-125.

C.5. Educational Resource. When completing a sale of Medical Marijuana Concentrate, a Medical Marijuana Store shall provide the patient with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate

D. Repealed.

E. Transfer Restriction.

1. Sampling Units. A Medical Marijuana Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. A Medical Marijuana Store shall not Transfer any Medical Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

F. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Medical Marijuana to a patient.

G. Delivery Outside Colorado Prohibited. A Medical Marijuana Store holding a valid delivery permit shall not deliver Medical Marijuana to an address that is outside the state of Colorado.

H. Storage and Display Limitations. A Medical Marijuana Store shall not display Medical Marijuana outside of a designated Restricted Access Area or in a manner in which Medical Marijuana can be seen from outside the Licensed Premises. Storage of Medical Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

I. Transfer of Expired Product Prohibited. A Medical Marijuana Store shall not Transfer any expired Medical Marijuana Product to a patient.

J. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The Transfer of Edible Medical Marijuana Product in the following shapes is prohibited:

a. The distinct shape of a human, animal, or fruit; or

b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Medical Marijuana Business. Nothing in this subparagraph (L)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Packaging, Labeling, and Product Safety.

3. Edible Medical Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Medical Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

K. Adverse Health Event Reporting. A Medical Marijuana Store must report Adverse Health Events pursuant to Rule 3-920.

L. Corrective and Preventive Action. This paragraph L shall be effective January 1, 2021. A Medical Marijuana Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

M. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-120

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(b), 44-10-203(1)(k), and 44-10-203(3)(h), C.R.S. The purpose of this rule is to establish that a Medical Marijuana Store must control and safeguard access to certain areas where Medical Marijuana will be sold, and to prevent diversion to non-patients. This Rule 5-120 was previously Rule M 404, 1 CCR 212-1.

5-120 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Medical Marijuana is sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – Only Medical Marijuana Patients Allowed."

B. Patients in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times to ensure that only persons with a valid patient registry card, primary caregivers of minors with a valid patient registry card (which may include guardians or parents of minors), advising caregivers who accompany patients that hold a valid registry card and whom they are advising, or transporting caregivers permitted to deliver Medical Marijuana to homebound patients as permitted by section 25-1.5-106(9)(e), C.R.S., are present in the Restricted Access Area. When allowing a patient or caregiver access to a Restricted Access Area, Employee Licensees shall make reasonable efforts to limit the number of patients and caregivers in relation to the number of Employee Licensees in the Restricted Access Area at any time.

C. Display of Medical Marijuana. The display of Medical Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the patient must be supervised by the Employee Licensee at all times when patients are present.

D. Pregnancy Warning. Medical Marijuana Stores must post, at all times and in a prominent place inside the Restricted Access Area, a warning that is at minimum three inches high and six inches wide that reads:

> **WARNING:** Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.

Basis and Purpose– 5-125

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), 44-10-501, and 44-10-505, C.R.S. The purpose of this rule is to identify Medical Marijuana Store sales requirements including patient quantity limits, Inventory Tracking System requirements to identify discrepancies with daily authorized quantity limits and THC potency authorizations and to require that Medical Marijuana Stores provide an educational resource to patients regarding the use of Medical Marijuana Concentrate.

5-125 – Patient Sale Requirements

A. Sales Limitations.

1. A Medical Marijuana Store and its employees shall not sell to a patient in a single business day, individually or in any combination, more than:

    a. Two ounces of medical marijuana flower; or

    b. Eight grams of Medical Marijuana Concentrate for a patient 21 years old of age or older, or two grams of Medical Marijuana Concentrate for a patient between 18 and 20 years old; or

    c. Medical Marijuana Products containing a combined total of 20,000 mg.

2. A Medical Marijuana Store and its employees shall not sell more than:

    a. Six Immature plants unless the patient has designated the Medical Marijuana Store as his or her primary store and supplied it with documentation from the patient's physician allowing the patient more than six plants;

    b. One half of the patient's extended plant count to a patient who has designated the Medical Marijuana Store as his or her primary store and supplied it with

documentation from the patient's physician allowing the patient more than six plants; or

c. Six Medical Marijuana plant seeds unless the patient has designated the Medical Marijuana Store as his or her primary store and supplied it with documentation from the patient's physician allowing the patient more than six Medical Marijuana seeds. One Medical Marijuana plant is equivalent to one Medical Marijuana seed.

3. Exemptions to Sales Limitations.

a. A Medical Marijuana Store may sell Medical Marijuana or Medical Marijuana Product in an amount that exceeds the sales limitation in subparagraph (C)(1) of this Rule if:

i. The patient has received a physician recommendation for more than two ounces of Medical Marijuana flower and the patient has designated the Medical Marijuana Store as his or her primary store;

ii. The patient has received a physician recommendation exempting the patient from the Medical Marijuana Product sales limitation and the patient has designated the Medical Marijuana Store as his or her primary store;

iii. The patient has designated the Medical Marijuana Store as his or her primary store and the patient has received a physician recommendation exempting the patient from the Medical Marijuana Concentrate sales limitation because:

A. Repealed;

B. The uniform certification form specifically states that the patient needs more than eight grams of Medical Marijuana Concentrate if a patient is 21 years or age or older, or two grams of Medical Marijuana Concentrate if the patient is between 18 and 20 years old;

C. It would be a significant Physical or Geographic Hardship for the patient to make a daily purchase; or

D. The patient had a registry identification card prior to 18 years of age.

iv. If the patient is homebound, with a physician recommendation exempting the patient from the Medical Marijuana Concentrate sales limitation, the patient is not required to register with a Medical Marijuana Store.

b. Significant Physical Hardship: A patient's physician who has a bona fide patient-physician relationship may provide an exemption to the patient's daily Medical Marijuana Concentrate sales limits based on the physician's determination that the patient has a significant physical hardship. The physician's determination of a significant physical hardship must be documented on the patient's uniform certification form which must be signed by the patient's physician. The circumstances that constitute a significant physical hardship are as follows:

i. The patient has been diagnosed with a chronic or debilitating disease or disabling medical condition or limited physical condition that restricts the mobility of the patient;

ii. The patient does not have the ability to obtain a driver's license based on the patient's medical condition; or

iii. The patient cannot use, or it would be onerous for the patient to use, public transportation or another ride sharing service based on the patient's medical condition.

c. Significant Geographic Hardship: A patient's physician who has a bona fide patient-physician relationship may provide an exemption to the patient's daily Medical Marijuana Concentrate sales limits based on the physician's determination that the patient has a significant geographic hardship. The physician's determination of a significant geographic hardship must be documented on the patient's uniform certification form which must be signed by the patient's physician. The circumstances that constitute a significant geographic hardship are as follows:

i. The patient does not reside in the following counties: Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Jefferson, Larimer, or Pueblo; and

ii. At least one of the following circumstances:

A. The patient resides in a county that does not permit the operation of Medical Marijuana Stores and that county is not listed above; or

B. The patient does not have a means of transportation and resides in an area without public transportation or Medical Marijuana Stores cannot be accessed by a patient using public transportation; or

C. The physician recommended a Medical Marijuana Concentrate that is not available from a Medical Marijuana Store located in the patient's county of residence.

B. Multiple Transactions. For purposes of Rule 5-125(A), a single transaction to a patient includes multiple Transfers to the same patient during the same business day where the Medical Marijuana Store employee knows or reasonably should know that such Transfer would result in the patient possessing more than the quantities of Medical Marijuana set forth above. In determining the imposition of any penalty for violation of this Rule 5-125(A), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

C. Inventory Tracking Requirements.

1. Before Completing a Transfer of Medical Marijuana to a patient, a Medical Marijuana Store and its Employee Licensee shall access and retrieve real-time sales data based on the patient identification number to verify that a sale to the patient will not exceed the daily authorized sales limit. The Medical Marijuana Store and Employee Licensee shall decline to complete the Transfer of Medical Marijuana to the patient if it would exceed the patient's daily authorized purchase limit which may be determined by a user error message from the Inventory Tracking System.

2. At the time of the sale to the patient the Medical Marijuana Store and its Employee Licensee shall record the sale in real time in the Inventory Tracking System. A Medical Marijuana Store may use a secondary software platform to transmit patient sale data to the Inventory Tracking system.

3. Temporary Outage of Inventory Tracking System. A Medical Marijuana Store may rely on the uniform certification form and is not responsible for any unintentional sale in excess of the authorized Medical Marijuana quantity limit that occurs during the outage, provided that the Medical Marijuana Store uploads its sales data into the Inventory Tracking System as soon as reasonably practicable after the end of the outage. A temporary outage is any event in which there is a technology-related inability to enter or retrieve real time sales data from the Inventory Tracking System.

D. Educational Resource. When completing a sale of Medical Marijuana Concentrate, a Medical Marijuana Store shall provide the patient with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

E. Confidentiality. All data collected pursuant to Rule, including any personal identifying patient information, is subject to the confidentiality requirements of 44-10-204, C.R.S.

F. Violation Affecting Public Safety. Violation of this Rule may be considered a license violation affecting public safety

5-200 Series – Medical Marijuana Cultivation Facilities~~: License Privileges~~

Please Note: *The following proposed revisions seek to implement SB 23-271 statutory revisions in section 44-10-502.*

Basis and Purpose – 5-205

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(II), 44-10-313, 44-10-502, and 44-10-503, C.R.S. The purpose of this rule is to establish a Medical Marijuana Cultivation Facility's license privileges in addition to the privileges outlined in these rules. This Rule 5-205 was previously Rule M 501, 1 CCR 212-1.

5-205 – Medical Marijuana Cultivation Facility: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Business – Shared Licensed Premises and Operational Separation, a Medical Marijuana Cultivation Facility may share a Licensed Premises with a commonly owned Retail Marijuana Cultivation Facility. However, a separate license is required for each specific business entity regardless of geographical location. In addition, a Medical Marijuana Cultivation Facility may share and operate at the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Medical Marijuana Cultivation Facility comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Medical Marijuana Cultivation Facility comply with all applicable rules. *See* 5-700 Series Rules.

B. Cultivation of Medical Marijuana and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Medical Marijuana Concentrate Authorized. A Medical Marijuana Cultivation Facility may propagate, cultivate, harvest, prepare, cure, package, store, and label Medical Marijuana and Physical Separation-Based Medical Marijuana Concentrate. A Medical Marijuana Cultivation Facility may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Medical Marijuana Concentrate.

C. Authorized Transfers. A Medical Marijuana Cultivation Facility may Transfer Medical Marijuana and Physical Separation-Based Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility, a Medical Marijuana Store, a Medical Marijuana Products Manufacturer, a Medical Marijuana Testing Facility, a Marijuana Research and Development Facility, or a Pesticide Manufacturer.

1. A Medical Marijuana Cultivation Facility shall not Transfer Flowering plants. A Medical Marijuana Cultivation Facility may only Transfer Vegetative plants as authorized pursuant to Rule 3-605.

2. A Medical Marijuana Cultivation Facility may Transfer Sampling Units of Medical Marijuana or Medical Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-502(5), C.R.S., and Rule 5-230.

3. A Medical Marijuana Cultivation Facility may Transfer Medical Marijuana or Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility prior to testing required by these rules only if such Transfer is in accordance with one of the two options below.

    a. The Medical Marijuana Cultivation Facility may Transfer Medical Marijuana or Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility prior to testing if such Transfer is for the purpose of Decontamination and only after all other steps outlined in the Medical Marijuana Cultivation Facility's standard operating procedures have been completed, including but not limited to drying, curing, and trimming; or

    b. The Medical Marijuana Cultivation Facility may Transfer Medical Marijuana or Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility prior to testing, drying, curing, trimming, or completion of any other steps in the Medical Marijuana Cultivation Facility's standard operating procedures, subject to the following additional requirements:

        i. The Medical Marijuana Cultivation Facility receiving the Transfer is identified as a centralized processing hub in the Inventory Tracking System and must have identical Controlling Beneficial Owner(s) with the originating Medical Marijuana Cultivation Facility;

        ii. An originating Medical Marijuana Cultivation Facility may only Transfer Medical Marijuana to one receiving Medical Marijuana Cultivation Facility that will be serving as a centralized processing hub.

        iii. The Medical Marijuana or Medical Marijuana Concentrate is weighed prior to leaving the originating Medical Marijuana Cultivation Facility and immediately upon receipt at the receiving Medical Marijuana Cultivation Facility and in accordance with Rule 3-605;

iv. The Transfer, weighing and entry into the Inventory Tracking System are all completed within 24 hours from initiating the Transfer;

v. The receiving Medical Marijuana Cultivation Facility is responsible for compliance with all testing requirements regardless of any testing performed prior to Transfer. If the receiving Medical Marijuana Cultivation Facility is pursuing a Reduced Testing Allowance, a Reduced Testing Allowance must be achieved separately for Medical Marijuana received from each originating Medical Marijuana Cultivation Facility. A Medical Marijuana Cultivation Facility that has achieved a Reduced Testing Allowance must maintain and produce complete testing records that can verify that facility's compliance with testing and Reduced Testing Allowance requirements; and

vi. The standard operating procedures for the originating Medical Marijuana Cultivation Facility and receiving Medical Marijuana Cultivation Facility clearly reflect the steps taken by each facility to Transfer, transport, receive, process, and test Harvest Batches.

4. A Medical Marijuana Cultivation Facility may Transfer Medical Marijuana to a Retail Marijuana Cultivation Facility or Accelerator Cultivator in accordance with Rules 5-235, 6-230, and 6-730.

5. A Medical Marijuana Cultivation Facility may Transfer Immature Plants, Medical Marijuana seeds, and Genetic Material to a Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator. Transfers made under this Rule must be in compliance with the 3-800 and the 3-900 Rules Series.

D. Packaging Processed Medical Marijuana. Processed Medical Marijuana plants shall be packaged in units of ten pounds or less and labeled pursuant to the 3-1000 Series Rules – Labeling, Packaging, and Product Safety, and securely sealed in a tamper-evident manner.

E. Authorized Marijuana Transport. A Medical Marijuana Cultivation Facility is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana so long as the place where transportation orders are taken is a Medical Marijuana Business and the transportation order is delivered to a licensed Medical Marijuana Business or Pesticide Manufacturer. Nothing in this Rule prevents a Medical Marijuana Cultivation Facility from transporting its own Medical Marijuana.

F. Performance-Based Incentives. A Medical Marijuana Cultivation Facility may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Medical Marijuana Cultivation Facility may not compensate a Sampling Manager using Sampling Units. *See* Rule 5-230 – Sampling Unit Protocols.

G. Authorized Sources of Medical Marijuana, Seeds, ~~and~~ Immature Plants, and Genetic Material.

1. A Medical Marijuana Cultivation Facility ~~shall only~~ may obtain Medical Marijuana seeds or Immature Plants from its own Medical Marijuana, properly Transferred Retail Marijuana cultivated at a Retail Marijuana Cultivation Facility with at least one identical Controlling Beneficial Owner, or properly Transferred from another Medical Marijuana Business pursuant to the inventory tracking requirements in the Rule 3-800 Series. A Medical Marijuana Cultivation Facility may also receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility or Accelerator Cultivator in compliance with Rules 5-235, 6-230, and 6-730. A Medical Marijuana Cultivation facility may not bring seeds, Immature

Plants, or other marijuana that is not Regulated Marijuana onto the Licensed Premises at any time.

2. A Medical Marijuana Cultivation Facility may obtain Regulated Marijuana seeds, Immature Plants, and Genetic Material from:

   a. Another Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility;

   b. A Retail Marijuana Testing Facility;

   c. A marijuana cultivation or testing facility licensed or otherwise approved pursuant to a permit or registration issued by a government agency to operate in another state or territory of the United States; or

   d. Pursuant to any federal legal authority allowing interstate commerce of Regulated Marijuana.

3. Transfers made under subparagraph (G)(2) of this Rule must be in compliance with the 3-800 and the 3-900 Rules Series.

H. Centralized Distribution Permit. A Medical Marijuana Cultivation Facility may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Medical Marijuana Concentrate and Medical Marijuana Product received from a Medical Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Medical Marijuana Stores.

1. For purposes of a Centralized Distribution Permit only, the term “commonly owned” means at least one natural person who is disclosed to the Division who has a minimum of five percent ownership in both the Medical Marijuana Cultivation Facility possessing a Centralized Distribution Permit and the Medical Marijuana Store to which the Medical Marijuana Concentrate and Medical Marijuana Product will be Transferred.

2. To apply for a Centralized Distribution Permit, a Medical Marijuana Cultivation Facility may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Medical Marijuana Cultivation Facility shall send a copy of its Centralized Distribution Permit addendum to the Local Licensing Authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.

3. A Medical Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Medical Marijuana Concentrate and Medical Marijuana Product from a Medical Marijuana Products Manufacturer for the sole purpose of temporary storage and Transfer to commonly owned Medical Marijuana Stores.

   a. A Medical Marijuana Cultivation Facility may only accept Medical Marijuana Concentrate and Medical Marijuana Product that is packaged and labeled for sale to a patient pursuant to the 3-1000 Series Rules.

   b. A Medical Marijuana Cultivation Facility storing Medical Marijuana Concentrate and Medical Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Medical Marijuana Concentrate or Medical Marijuana

Product on the Medical Marijuana Cultivation Facility's Licensed Premises for more than 90 days from the date of receipt.

c. All Transfers of Medical Marijuana Concentrate and Medical Marijuana Product by a Medical Marijuana Cultivation Facility shall be without consideration.

4. All security and surveillance requirements that apply to a Medical Marijuana Cultivation Facility apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

I. Transition Permit. A Medical Marijuana Cultivation Facility may only operate at two geographical locations pursuant to Rule 2-255(D).

Basis and Purpose – 5-210

The statutory authority for this rule includes but is not limited to sections 44-10-201, 44-10-202(1)(c), 44-10-203(1)(k), 44-10-313, 44-10-401(2)(a)(II), 44-10-501, 44-10-502, 44-10-503, and 44-10-505, C.R.S. The purpose of this rule is to clarify what activity is or is not allowed at a Medical Marijuana Cultivation Facility. This Rule 5-210 was previously Rule M 502, 1 CCR 212-1.

5-210 – Medical Marijuana Cultivation Facility: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. A Medical Marijuana Cultivation Facility is prohibited from Transferring Medical Marijuana and Medical Marijuana Concentrate that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. Transfer to Patient Prohibited. A Medical Marijuana Cultivation Facility is prohibited from Transferring Medical Marijuana to a patient. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-502(5), C.R.S., and Rule 5-230.

C. Inventory Limit. A Medical Marijuana Cultivation Facility shall not possess more plants than it is permitted to possess based on its production management class. *See* Rule 5-225 – Medical Marijuana Cultivation Facility: Production Management.

D. Corrective and Preventive Action. This paragraph D shall be effective January 1, 2021. A Medical Marijuana Cultivation Facility shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

E. Adverse Health Event Reporting. A Medical Marijuana Cultivation Facility must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 5-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(i), 44-10-203(2)(d)(I)-(VI), 44-10-502(3), and 44-10-401(2)(a)(II), C.R.S. The purpose of this rule is to permit laboratory testing of Medical Marijuana for Medical Marijuana Cultivation Facilities. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Businesses. This Rule 5-215 was previously Rule M 505, 1 CCR 212-1.

5-215 – Medical Marijuana Cultivation Facility: Testing

A. Samples on Demand. Medical Marijuana Cultivation Facility shall, upon request of the Division, submit a sufficient quantity of Medical Marijuana to a Medical Marijuana Testing Facility to enable laboratory or chemical analysis thereof. The Division will notify the Licensee of the results of the analysis. *See* Rule 3-805 – Regulated Marijuana Business: Inventory Tracking System and Rule 3-405 – Business Records Required.

B. Samples Provided for Testing. A Medical Marijuana Cultivation Facility may provide Samples of its Medical Marijuana to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. *See* Rule 3-405 – Business Records Required.

Basis and Purpose – 5-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(d), 44-10-203(1)(k), 44-10-203(1)(c), 44-10-203(2)(d)(I)-(VI), and 44-10-401(2)(a)(II), C.R.S. The purpose of this rule is to establish the categories of Medical Marijuana Concentrate that may be produced at a Medical Marijuana Cultivation Facility and standards for the production of those concentrate. This Rule 5-220 was previously Rule M 506, 1 CCR 212-1.

5-220 – Medical Marijuana Cultivation Facility: Medical Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Medical Marijuana Concentrate. A Medical Marijuana Cultivation Facility may only produce Physical Separation-Based Medical Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. *See* Rule 3-405- Business Records Required. No other method of production or extraction for Medical Marijuana Concentrate may be conducted within the Licensed Premises of a Medical Marijuana Cultivation Facility unless the Controlling Beneficial Owner(s) of the Medical Marijuana Cultivation Facility also has a valid Medical Marijuana Products Manufacturer license and the

room in which Medical Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If a Medical Marijuana Cultivation Facility produces Physical Separation-Based Medical Marijuana Concentrate, then all areas in which those concentrates are produced and all Owner Licensees and Employees Licensees engaged in the production of those concentrate shall be subject to all of requirements imposed upon a Medical Marijuana Products Manufacturer that produces Medical Marijuana Concentrate, including general requirements. *See* 3-300 Series Rules – Health and Safety Regulations and Rule 5-315 Medical Marijuana Products Manufacturer: Medical Marijuana Concentrate Production.

C. Possession of Other Categories of Medical Marijuana Concentrate.

1. It shall be considered a violation of this Rule if a Medical Marijuana Cultivation Facility possesses a Medical Marijuana Concentrate other than a Physical Separation-Based Medical Marijuana Concentrate on its Licensed Premises unless: the Controlling Beneficial Owner(s) of the Medical Marijuana Cultivation Facility also has a valid Medical Marijuana Products Manufacturer license, or the Medical Marijuana Cultivation Facility has been issued a Centralized Distribution Permit and is in possession of the Medical Marijuana Concentrate in compliance with Rule 5-205(H).

2. Notwithstanding subparagraph (C)(1) of this Rule 5-220, a Medical Marijuana Cultivation Facility shall be permitted to possess Solvent-Based Medical Marijuana Concentrate only when the possession is due to the Transfer of Medical Marijuana flower or trim that failed microbial testing to a Medical Marijuana Products Manufacturing Facility for processing into a Solvent-Based Medical Marijuana Concentrate, and the Medical Marijuana Products Manufacturer Transfers the resultant Solvent-Based Medical Marijuana Concentrate back to the originating Medical Marijuana Cultivation Facility.

a. The Medical Marijuana Cultivation Facility shall comply with all requirements in Rule 4-135(C) when having Solvent-Based Medical Marijuana Concentrate manufactured out of Medical Marijuana flower or trim that failed microbial testing.

b. The Medical Marijuana Cultivation Facility is responsible for submitting the Solvent-Based Medical Marijuana Concentrate for all required testing for contaminants pursuant to Rule 4-120 – Medical Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule 4-125 – Medical Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Rules or Marijuana Code.

D. Production of Alternative Use Product or Audited Product Prohibited. A Medical Marijuana Cultivation Facility shall not produce an Alternative Use Product or Audited Product.

E. Possession of Alternative Use Product or Audited Product. A Medical Marijuana Cultivation Facility is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Medical Marijuana Cultivation Facility received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from a Medical Marijuana Products Manufacturer that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule 5-325.

Basis and Purpose – 5-225

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(5), 44-10-401(2)(a)(II), 44-10-502, C.R.S. The rule establishes a means by which to manage

the overall production of Medical Marijuana. The intent of this rule is to encourage responsible production to meet demand for Medical Marijuana, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the sale of illegal marijuana. This Rule 5-225 was previously Rule M 507, 1 CCR 212-1.

5-225 – Medical Marijuana Cultivation Facility: Production Management

A. One Medical Marijuana Cultivation Facility per Licensed Premises. Except as permitted by subparagraph (B)(1)(b), a Licensed Premises shall only have one Medical Marijuana Cultivation Facility license and each Licensed Premises must be located at a distinct address recognized by the local jurisdiction.

1. Existing Medical Marijuana Cultivation Facilities that have Multiple Licenses at a single Licensed Premises.

a. Mandatory Collapse for Licenses with Identical Controlling Beneficial Owner Percentages.

i. Medical Marijuana Cultivation Facilities that have multiple licenses at a single Licensed Premises and that have identical Controlling Beneficial Owners holding identical ownership percentages are subject to mandatory collapse. Such Licensees shall notify the Division prior to June 30, 2019 which Medical Marijuana Cultivation Facility license they desire to survive. The Medical Marijuana Cultivation Facility license identified as the surviving license will remain active after July 1, 2019; all other Medical Marijuana Cultivation Facility licenses shall be surrendered effective July 1, 2019.

ii. The production management class for the surviving Medical Marijuana Cultivation Facility license will be calculated pursuant to subparagraph (B)(3) below using the aggregate average plants actually cultivated by all Medical Marijuana Cultivation Facility licenses that were located at the Licensed Premises during the period January 1, 2018 to December 31, 2018.

b. Optional Collapse for Licenses with Non-Identical Controlling Beneficial Owner Percentages. Medical Marijuana Cultivation Facilities that have multiple licenses at a single Licensed Premises and that do not have identical Controlling Beneficial Owners holding identical ownership percentages as of July 1, 2019, may continue operating all Medical Marijuana Cultivation Facility licenses that existed at that Licensed Premises prior to July 1, 2019. The maximum plant count for each such Medical Marijuana Cultivation Facility will be calculated pursuant to subparagraph (B)(3) below based on the number of average plants actually cultivated by that Medical Marijuana Cultivation Facility during the period January 1, 2018 to December 31, 2018.

i. Medical Marijuana Cultivation Facilities that are permitted to continue operating multiple licenses at a single Licensed Premises after July 1, 2019, may collapse through one or more approved change of ownership applications, or one or more voluntary license surrenders, establishing identical Controlling Beneficial Owners holding identical ownership percentages for all Medical Marijuana Cultivation Facilities at the single Licensed Premises.

ii. For any change of ownership application or voluntary license surrender seeking collapse after July 1, 2019, the Medical Marijuana Cultivation Facility shall identify the license that will survive. The Medical Marijuana Cultivation Facility license identified as the surviving license will remain after collapse; all other Medical Marijuana Cultivation Facility licenses will be surrendered at the time of collapse.

iii. The class for the surviving Medical Marijuana Cultivation Facility license will be determined according to subparagraph (B)(3) below based on the aggregate average number of Medical Marijuana plants actually cultivated by all Medical Marijuana Cultivation Facility Licensees that were located at the Licensed Premises during the 180 days prior to the collapse.

2. Collapse after July 1, 2019. After July 1, 2019, Medical Marijuana Cultivation Facility licenses shall be permitted to collapse at a single Licensed Premises through an approved change of location application if all Medical Marijuana Cultivation Facility licenses for which collapse is sought meet the following requirements:

a. All Medical Marijuana Cultivation Facility licenses sought to be collapsed have been consistently operating for at least 180 days prior to the proposed collapse;

b. All Medical Marijuana Cultivation Facility licenses sought to be collapsed have identical Controlling Beneficial Owners holding identical ownership percentages;

c. There is no pending administrative action regarding any of Medical Marijuana Cultivation Facility licenses sought to be collapsed;

d. The class for the surviving Medical Marijuana Cultivation Facility license has not been decreased in the 180 days prior to the change of location application;

e. All Medical Marijuana Cultivation Facility Licensees identify the desired surviving license and agree that all other Medical Marijuana Cultivation Facility licenses will be surrendered at the time of collapse; and

f. Determining Class for Surviving License.

i. Surviving License Class Will Not Decrease. The class for the surviving license will not be decreased as a result of any approved change of location application.

ii. Surrendered License is Class 1, Class 2, or Class 3. For the surviving license to increase one class or one increment of 3,000 plants if already higher than class 3, during the 180 days prior to the change of location application, the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time.

iii. Surrendered License is Higher than Class 3. For the surviving license to increase by the maximum authorized plant count of the surrendered license, during the 180 days prior to the change of location application the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time. If during the 180 days prior to the change of location application, the surrendering license did not cultivate

at least 50% of the maximum authorized plant count and Transfer at least 85% of the inventory it produced, the surviving license will only increase one class or one increment of 3,000 plants if already higher than class 3.

iv. Division Determination of Class. If a collapse results in a maximum authorized plant count in the middle of a class, the surviving license's maximum authorized plant count will be rounded up to the top of that class.

B. Production Management.

1. Production Management Classes.

a. Class 1: 1 – 500 plants

b. Class 2: 501 – 1,500 plants

c. Class 3: 1,501 – 3,000 plants

i. The maximum authorized plant count above 3,000 plants shall increase in one or two increments of 3,000 plants. A Medical Marijuana Cultivation Facility may be allowed to increase its maximum authorized plant count one or two increments of 3,000 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule 5-225.

2. All initial Medical Marijuana Cultivation Facility licenses issued on or after July 1, 2019 will be issued as a Class 1 License.

3. Each Medical Marijuana Cultivation Facility with a license(s) granted before July 1, 2019, at a minimum, will be placed into the production management class that includes the average number of plants it cultivated during the period January 1, 2018 to December 31, 2018.

a. Medical Marijuana Cultivation Facilities with less than 180 days of consistent cultivation history will be placed into the class 1 production management class.

b. Any Medical Marijuana Cultivation Facility that artificially increases plant count or otherwise misrepresents any data in connection with its plant count will be placed into the class the Division determines it would have been placed into without the artificial increase or misrepresentation. In addition, any such artificial increase of plant count or other misrepresentation is a public safety violation that may result in administrative action.

4. Immature Plants. For purposes of calculating the maximum number of authorized plants, Immature Plants are excluded but must be fully accounted for in the Inventory Tracking System.

5. Ground for Denial. The Division may deny an application for additional plants pursuant to paragraph E of this Rule if the Licensee exceeded the authorized plant count during the relevant time period for production.

6. Violation Affecting Public Safety. It may be considered a license violation affecting public safety for a Licensee to exceed the authorized plant count pursuant to these Rules.

C. Inventory Management.

1. Inventory Management for Medical Marijuana Cultivation Facilities that Have One or Two Harvest Seasons a Year. Beginning the 721st day from the commencement of its first cultivation activities, a Medical Marijuana Cultivation Facility that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Medical Marijuana flower and trim the Licensee produced that was Transferred to another Medical Marijuana Business in the previous 720 days.

2. Inventory Management for Medical Marijuana Cultivation Facilities That Have More Than Two Harvest Seasons a Year. Beginning the 181st day from the commencement of its first cultivation activities, a Medical Marijuana Cultivation Facility that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Medical Marijuana flower and trim the Licensee produced that was Transferred to another Medical Marijuana Business in the previous 180 days.

D. Class Decrease. For any Medical Marijuana Cultivation Facility that is authorized to cultivate more than 500 plants, the Division may review the purchases, Transfers, and cultivated plant count in connection with the license renewal process or after an investigation. Based on the Division's review, it may reduce the Licensee's maximum allowed plant count to a lower production management class identified in subparagraph (B)(1) of this Rule 5-225. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:

1. The Licensee Transferred less than 70% of the inventory it reported as packaged in the Inventory Tracking System during any 180 day review period;

2. On average during the previous 180 days, the Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management class;

3. Whether the plants/inventory suffered a catastrophic event during the review period;

4. Existing inventory and inventory history;

5. Sales contracts;

6 Number of patients registered to any commonly owned Medical Marijuana Store; and

7. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

E. Application for Additional Plants.

1. Medical Marijuana Cultivation Facilities That Have One or Two Harvest Seasons Per Year.

a. After one harvest season during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated, the Licensee may apply to the Division for a production management class increase to be authorized to cultivate the number of plants in the next highest production management class. The Licensee must demonstrate:

i. That during the previous harvest season, prior to the class increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count;

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System in the previous 360 days to another Medical Marijuana Business;

iii. The Division may consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the previous 360 days, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count; and

iv. Any other information requested to aid the Division in its evaluation of the production management class increase application.

b. If the Division approves the production management class increase application, the Licensee shall pay the applicable Expanded Production Management Class Fee prior to cultivating the additional authorized plants. *See* Rule 2-205 – Fees.

c. For a Licensee with an authorized plant count in Classes 2 or 3 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Medical Marijuana Cultivation Facility license fee and the applicable expanded production management class fee at license renewal. *See* Rule 2-205 – Fees.

d. After one harvest season during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management classes, or (b) if already authorized to cultivate at a class 3, two increments of 3,000 plants (6,000 plants total), every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two classes or two increments of 3,000 plant (6,000 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count, and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Medical Marijuana Business;

C. If the Medical Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking System during that time period and/or Transfers into the Medical Marijuana Cultivation Facility or related Medical Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Medical Marijuana Cultivation Facility currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two classes or two increments of 3,000 plants;

B. The Medical Marijuana Cultivation Facility cultivated on average at least 90% of its authorized plant count and during the preceding 360 days the Medical Marijuana Cultivation Facility and/or one or more commonly owned Medical Marijuana Stores Transferred in Medical Marijuana from one or more unrelated Medical Marijuana Cultivation Facility(ies);

C. The Medical Marijuana Cultivation Facility has entered into written agreement(s) or contract(s) for the sale of Medical Marijuana in the next 360 days supporting the requested two production management class increase or two increments of 3,000 plants; or

D. An established history of responsible cultivation and Transfer by the Medical Marijuana Cultivation Facility;

E. Any history of noncompliance with the Medical Code, Marijuana Code, and/or Rules by the Medical Marijuana Cultivation Facility, or any commonly owned Medical Marijuana Business, and/or any investigation of, or administrative action against, the Medical Marijuana Cultivation Facility or any commonly owned Medical Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Medical Marijuana Cultivation Facilities That Have More Than Two Harvest Seasons per Year.

a. After a 180-day period during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated, the Licensee may apply to the Division for a production management class increase to be authorized to cultivate the number of plants in the next highest production management class. The Division may consider the following in determining whether to approve the production management class increase:

i. That for the 180 days prior to the production management class increase application, the Licensee consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Medical Marijuana Business.

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the 180-day time period, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count.

iv. Any other information requested to aid the Division in its evaluation of the production management class increase application.

b. If the Division approves the production management class increase application, the Licensee shall pay the applicable Expanded Production Management class License Fee prior to cultivating the additional authorized plants. *See* Rule 2-205 – Fees.

c. For a Licensee with an authorized plant count in Class 2 or Class 3 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Medical Marijuana Cultivation Facility license fee and the applicable expanded production management class fee at license renewal. *See* Rule 2-205 – Fees.

d. After accruing 180 days during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management classes, or (b) if already authorized to cultivate at a class 3, two increments of 3,000 plants (6,000 plants total) every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two classes or increments of 3,000 plants (6,000 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Medical Marijuana Business;

C. If the Medical Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a packing in the Inventory Tracking System during that time period and/or Transfers into the Medical Marijuana Cultivation Facility or related Medical Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Medical Marijuana Cultivation Facility currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two classes or two increments of 3,000 plants;

B. The Medical Marijuana Cultivation Facility cultivated on average at least 90% of its authorized plant count and during the preceding 180 days the Medical Marijuana Cultivation Facility and/or one or more commonly owned Medical Marijuana Stores Transferred in Medical Marijuana from one or more unrelated Medical Marijuana Cultivation Facility(ies);

C. The Medical Marijuana Cultivation Facility has entered into a written agreement(s) or contract(s) for the sale of Medical Marijuana in the next 180 days supporting the requested two production management class increase or two increments of 3,000 plants;

D. An established history of responsible cultivation and Transfer by the Medical Marijuana Cultivation Facility;

E. Any history of noncompliance with the Medical Code, Marijuana Code, and/or Rules by the Medical Marijuana Cultivation Facility, or any commonly owned Medical Marijuana Business, and/or any investigation of, or administrative action against, the Medical Marijuana Cultivation Facility or any commonly owned Medical Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

e. A Medical Marijuana Cultivation Facility that does not have 180 days of cultivating history may apply to increase its plant count to a Class 2 or Class 3 pursuant only to this subparagraph (E)(2)(e). A Medical Marijuana Cultivation Facility applying for a production management class increase request under this subparagraph (E)(2)(e) must demonstrate all of the following at the time of application:

i. The Medical Marijuana Cultivation Facility making the class increase request also owns at least three Medical Marijuana Stores with identical Controlling Beneficial Owners;

ii. The Controlling Beneficial Owners of the Medical Marijuana Cultivation Facility and three Medical Marijuana Stores used to support the class increase request have owned the aforementioned Medical Marijuana Store licenses for at least the preceding 180 days;

iii. The three Medical Marijuana Stores used to support the class increase request have consistently Transferred Regulated Marijuana to consumers in the preceding 180 days and have a history of wholesale purchases that justify the need for a class increase above a class 1;

iv. In the 180 days preceding the Licensee's class increase request pursuant to this subparagraph (e), the Medical Marijuana Cultivation Facility, three Medical Marijuana Stores, and identical Controlling Beneficial Owners have not been subject to administrative action by the State Licensing Authority;

v. The Medical Marijuana Cultivation Facility making the class increase request has an established history of responsible cultivation and Transfers of its Regulated Marijuana inventory; and

vi. The Medical Marijuana Cultivation Facility subject to the class increase request has not previously requested a class increase pursuant to this subparagraph (e).

3. Application for Class Increase. Applications for a class increase shall be submitted on Division forms, and shall be complete and accurate. Applications for a class increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.

F. Maximum Allowed Medical Marijuana Cultivation Facility Licenses.

1. A Person that is a Controlling Beneficial Owner with an Interest in Three or More Medical Marijuana Cultivation Facility Licenses. For every multiple of three Medical Marijuana Cultivation Facility licenses in which a Person is a Controlling Beneficial Owner, the Person must also be a Controlling Beneficial Owner in at least one Medical Marijuana Store. For example: (1) a Person that is a Controlling Beneficial Owner in three, four, or five Medical Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least one Medical Marijuana Store; (2) a Person that is a Controlling Beneficial Owner in six, seven, or eight Medical Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least two Medical Marijuana Stores; (3) a Person that is a Controlling Beneficial Owner in nine, ten, or eleven Medical Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least three Medical Marijuana Stores; etcetera.

2. A Person that is a Controlling Beneficial Owner in Less than Three Medical Marijuana Cultivation Facility Licenses. A Person that is a Controlling Beneficial Owner in less than three Medical Marijuana Cultivation Facility licenses shall not be required to be a Controlling Beneficial Owner in a Medical Marijuana Store.

G. The State Licensing Authority, in his or her sole discretion, may adjust any of the plant limits described in this Rule 5-225 on an industry-wide aggregate basis for all Medical Marijuana Cultivation Facilities subject to that limitation.

Basis and Purpose – 5-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(II), and 44-10-502(5), C.R.S. The purpose of this rule is to establish the circumstances under which a Medical Marijuana Cultivation Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Medical Marijuana Cultivation Facility that Transfer Sampling Units. This Rule 5-230 was previously Rule M 508, 1 CCR 212-1.

5-230 – Medical Marijuana Cultivation Facility: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Medical Marijuana Cultivation Facility may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Medical Marijuana Cultivation Facility who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual designated as a Sampling Manager by a Medical Marijuana Cultivation Facility must possess a valid patient registry card.

3. An individual may be designated as a Sampling Manager by more than one Regulated Marijuana Business.

4. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

5. A Medical Marijuana Cultivation Facility that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-502(5), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 5-230. *See also* Rule 3-905 – Business Records Required. A Medical Marijuana Cultivation Facility shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production Batch has satisfied the testing requirements in 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Medical Marijuana flower or trim shall not exceed one gram.

2. A Sampling Unit of Medical Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Medical Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Medical Marijuana Cultivation Facility as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Medical Marijuana or fifteen grams of Medical Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Medical Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Medical Marijuana Cultivation Facility shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

D. Compensation Prohibited. A Medical Marijuana Cultivation Facility may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-502(5), C.R.S.

G. Recordkeeping Requirements. A Medical Marijuana Cultivation Facility shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, a Medical Marijuana Cultivation Facility shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Medical Marijuana Cultivation Facility shall also maintain copies of the Medical Marijuana Cultivation Facility's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-235

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(II), 44-10-502(9)(a)-(c), 44-10-502(9.5), and 39-28.8-297, C.R.S. The purpose of this rule is to allow a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from "Retail" to "Medical."

5-235 – Medical Marijuana Cultivation Facility: Ability to Change Designation of Regulated Marijuana

A. Changing Designation from Retail Marijuana to Medical Marijuana. Beginning July 1, 2022, a Medical Marijuana Cultivation Facility may accept Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from Retail Marijuana to Medical Marijuana pursuant to the following requirements:

1. The Medical Marijuana Cultivation Facility may only accept Retail Marijuana that has passed all required testing;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility are co-located;

3. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner;

4. The Medical Marijuana Cultivation Facility must receive the Transfer and designate the inventory as Medical Marijuana in the Inventory Tracking System the same day. The Medical Marijuana Cultivation Facility must assign and attach an RFID tag reflecting its Medical Marijuana license number to the Medical Marijuana following completion of the Transfer in the Inventory Tracking System;

5. After the designation change, the Medical Marijuana cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules;

6. Both the Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility must remain at, or under, its inventory limit before and after the Retail Marijuana changes its designation to Medical Marijuana; and

7. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

B. Changing Designation from Medical Marijuana to Retail Marijuana. Beginning January 1, 2023, a Medical Marijuana Cultivation Facility may Transfer Medical Marijuana to a Retail Marijuana Cultivation Facility or Accelerator Cultivator in order to change its designation from Medical Marijuana to Retail Marijuana pursuant to the following requirements:

1. The Medical Marijuana Cultivation Facility may only Transfer Medical Marijuana that has passed all required testing in accordance with the 4-100 Series Rules – Regulated Marijuana Testing Program;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility or Accelerator Cultivator share a Licensed Premises in accordance with Rule 3-215, unless:

   a. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility or Accelerator Cultivator have at least one identical Controlling Beneficial Owner; and

   b. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility or Accelerator Cultivator cannot share a Licensed Premises because the Local Licensing Authority or Local Jurisdiction prohibits the operation of either a Medical Marijuana Cultivation Facility or a Retail Marijuana Cultivation Facility.

3. The Medical Marijuana Cultivation Facility must report the Transfer in the Inventory Tracking System the same day that the change in designation from Medical Marijuana to Retail Marijuana occurs;

4. After the designation change, the Retail Marijuana cannot be Transferred to the originating or any other Medical Marijuana Business or otherwise be treated as Medical Marijuana. The inventory is Retail Marijuana and is subject to all permissions and limitations in the 6-200 Series Rules;

5. Both the Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility or Accelerator Cultivator must remain at, or under, its respective inventory limit before and after the Medical Marijuana changes its designation to Retail Marijuana;

6. The Retail Marijuana Cultivation Facility or Accelerator Cultivator shall pay any Retail Marijuana excise tax that is imposed pursuant to section 39-28.8-302, C.R.S.;

7. The Retail Marijuana Cultivation Facility or Accelerator Cultivator shall notify the Local Licensing Authority or Local Jurisdiction where the Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility or Accelerator Cultivator operate and pay any applicable excise tax on the Retail Marijuana in the manner determined by the Local Licensing Authority or Local Jurisdiction; and

8. Pursuant to the requirements of this subparagraph (B), a Medical Marijuana Cultivation Facility may make a virtual Transfer of Medical Marijuana that is reflected in the Inventory Tracking System even if the Medical Marijuana is not physically moved prior to the change of designation to Retail Marijuana.

Basis and Purpose – 5-240

The Statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(j.5), 44-10-203(1)(k), 44-10-401(2)(a)(II), and 44-10-502(10)(a)-(c). The purpose of this rule is to allow a Medical Marijuana Cultivation Facility Licensee that plans to cultivate Medical Marijuana outdoors to submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event.

5-240 Medical Marijuana Cultivation Facility: Contingency Plan for Outdoor Cultivation

A. Submission of Contingency Plan.

1. Beginning January 1, 2022, Medical Marijuana Cultivation Facility Licensees that plan to cultivate Medical Marijuana outdoors may submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event. The Medical Marijuana Cultivation Facility shall also submit a copy of the plan to the Local Licensing Authority in the local jurisdiction where the Licensee operates, and if Transferring Medical Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

2. A Medical Marijuana Cultivation Facility may submit a contingency plan at any time, but it must be filed at least 7 days prior to taking action pursuant to the contingency plan and must be approved by the State Licensing Authority prior to taking action pursuant to the contingency plan.

3. After initial submission and approval of a contingency plan, a contingency plan must be submitted with the Medical Marijuana Cultivation Facility's license renewal application. Any material change to a contingency plan prior to a renewal application must be submitted for review and approval pursuant to subsection (A)(2) above prior to taking action pursuant to the revised contingency plan.

4. The Division shall notify the appropriate Local Licensing Authorities of the approval of the contingency plan.

B. Requirements for Outdoor Contingency Plans.

1. Identification of the type of Adverse Weather Event that the plan applies to, including any deviations based on the type of Adverse Weather Event.

2. Primary Contact. A primary contact for the Medical Marijuana Cultivation Facility must be identified on the contingency plan, including the: name, title, phone number, and email address of the primary contact. The Medical Marijuana Cultivation Facility shall notify the Division of any change to the primary contact or required contact information within 48 hours of the change.

3. Transport Manifest. If the contingency plan provides for the Transfer of Medical Marijuana, a Medical Marijuana Cultivation Facility shall submit a standing transport manifest that could be used by a Licensee upon approval during an Adverse Weather Event if creating a transport manifest through the Inventory Tracking System is impracticable. The standing transport manifest shall include: identification and address of the receiving Licensee.

4. Disclosure of Receiving Licensed Premises.

a. Medical Marijuana may only be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or an off-premises storage facility.

b. If Medical Marijuana will be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility pursuant to a contingency plan, that plan must include the name, ownership, and address of the receiving Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility, along with a diagram of the proposed receiving Licensed Premises.

c. The receiving Licensed Premises shall be an existing location that currently holds an approved state and local license or an off-premises storage facility permit. The receiving Licensee is not required to share any Controlling Beneficial Owners with the Transferring Medical Marijuana Cultivation Facility.

d. A Medical Marijuana Cultivation Facility that cultivates outdoors may identify and Transfer Medical Marijuana to no more than five receiving Licensed Premises' as part of a contingency plan.

5. Disclosure of Modifications to the Premises and Security and Surveillance. Proposed modifications to the Licensed Premises and any anticipated impacts to compliance with security and surveillance requirements pursuant to Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6).

C. License Requirements when Acting Pursuant to a Contingency Plan. To the extent that this subsection (C) conflicts with other rule sections, this subsection shall control during the time that a Licensee is acting pursuant to a contingency plan.

1. Notification.

a. Notification of action pursuant to an approved contingency plan shall be made to the Division within 24 hours after initiating action pursuant to a contingency plan. A Medical Marijuana Cultivation Facility that cultivates outdoors must also notify the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Medical Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

b. Notification of ceasing action pursuant to the approved contingency plan shall be made to the Division within 24 hours of returning to normal business operations. If action will continue more than 7 days after initiating action pursuant to a contingency plan the licensee shall contact the Division and explain why they cannot return to normal business operations.

c. Any notification shall be made in writing and can be made by email to the Division.

2. Production Management. Medical Marijuana Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility pursuant to a contingency plan is not included in the receiving Licensed Premises' inventory limit until the Medical Marijuana Cultivation Facility acting pursuant to the contingency plan returns to normal business operations.

3. Modification of Premises. An application for a modification of a Licensed Premises is not required as part of a contingency plan unless the modification or change in premises becomes a permanent modification. If that change becomes a permanent change, a modification of premises application must be submitted within 14 days.

4. Security Requirements. All security and surveillance requirements that apply to a Medical Marijuana Cultivation Facility apply to activities conducted pursuant to the contingency plan. If the contingency plan does not require the Transfer of Regulated Marijuana to another Licensed Premises, but requires plants to be covered or video surveillance to be otherwise temporarily obstructed, exemptions to the video surveillance requirements in Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6) may be approved as part of the contingency plan.

5. Inventory Tracking Requirements. Licensees must use the Inventory Tracking System to ensure Medical Marijuana is identified and tracked during all times that action is being taken pursuant to a contingency plan. If a Medical Marijuana Cultivation Facility harvests, Transfers, or packages Medical Marijuana it must be fully reconciled in the Inventory Tracking System within 48 hours of initiating action pursuant to the contingency plan.

    a. Harvest Requirements. If Medical Marijuana is harvested, the weight of Medical Marijuana can be captured on a per harvest level and equally applied to individual plants rather than requiring the initial wet weight of each plant. This initial harvest weight may be captured at a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility upon arrival at the Licensed Premises approved as part of the contingency plan. Harvest Batches and Inventory Tracking System packages must be reported by the Medical Marijuana Cultivation Facility acting pursuant to the contingency plan in the Inventory Tracking System.

    b. Transport Manifest. The Medical Marijuana Cultivation Facility acting pursuant to the contingency plan must report all Medical Marijuana that is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility on a transport manifest.

        i. A Licensee may use the approved standing transport manifest during an Adverse Weather Event only when using the Inventory Tracking System is not possible.

        ii. The Licensee shall manually fill out the dates, times, and individual transporting Medical Marijuana on a copy of the standing transport manifest.

        iii. The Licensee shall ensure the standing transport manifest and copy of the approved Contingency plan remain in the Licensee's possession during any transport of Medical Marijuana when it is not possible to use an Inventory Tracking System generated transportation manifest at the time of the Adverse Weather Event.

6. Transfers. If Medical Marijuana is Transferred to another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility it is exempted from the packaging and labeling requirements in Rule 3-1005(B).

7. Virtual and Physical Separation. If Medical Marijuana is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility that inventory must be virtually separated by Harvest Batch and must also be virtually and physically separated from the receiving Licensee's inventory. Harvest Batches must also be clearly identified at the receiving Licensed Premises with the Harvest Batch name and date of harvest.

8. Finishing Product. After Transferring Medical Marijuana to another Licensed Premises, a Medical Marijuana Cultivation Facility may finish that harvest at the receiving Licensed Premises if all Medical Marijuana is accounted for in the Inventory Tracking System and the Licensed Premises is in compliance with all surveillance requirements.

9. Testing. The originating Licensee acting pursuant to a contingency plan is responsible for the submission of Test Batch(es).

    a. Each Harvest Batch or Production Batch Transferred pursuant to a contingency plan must be submitted for all required tests and is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

    b. Any passing or failing tests of a Harvest Batch or Production Batch Transferred pursuant to a contingency plan will not count for or against a Licensee's Reduced Testing Allowance.

5-300 Series – Medical Marijuana Products Manufacturer~~s~~ Facilities

Basis and Purpose – 5-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(14), and 44-10-503, C.R.S. The purpose of this rule is to establish a Medical Marijuana Products Manufacturer's license privileges. This Rule 5-305 was previously Rule M 601, 1 CCR 212-1.

5-305 – Medical Marijuana Products Manufacturer: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Products Manufacturer may share and operate at the same Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Medical Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises as a Marijuana Research and Development Facility so long as:

    1. Each business or business entity holds a separate license;

    2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

    3. Both the Marijuana Research and Development Facility and the Medical Marijuana Products Manufacturer comply with all terms and conditions of the R&D Co-Location Permit; and

    4. Both the Marijuana Research and Development Facility and the Medical Marijuana Products Manufacturer comply with all applicable rules. *See* 5-700 Series Rules.

B. Authorized Transfers. A Medical Marijuana Products Manufacturer is authorized to Transfer Medical Marijuana as follows:

1. Medical Marijuana Concentrate and Medical Marijuana Product.

a. A Medical Marijuana Products Manufacturer may Transfer its own Medical Marijuana Product and Medical Marijuana Concentrate to Medical Marijuana Stores, other Medical Marijuana Products Manufacturers, Medical Marijuana Testing Facility, Marijuana Research and Development Facility and Pesticide Manufactures.

b. A Medical Marijuana Products Manufacturer may Transfer Medical Marijuana Product and Medical Marijuana Concentrate to a Medical Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.

i. Prior to any Transfer pursuant to this Rule 5-305(B)(1)(b), a Medical Marijuana Products Manufacturer shall verify Medical Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. *See* Rule 5-205 – Medical Marijuana Cultivation Facility: License Privileges.

ii. For any Transfer pursuant to this Rule 5-305(B)(1)(b), A Medical Marijuana Products Manufacturer shall only Transfer Medical Marijuana Product and Medical Marijuana Concentrate that is packaged and labeled for Transfer to a patient. *See* 3-1000 Series Rules.

2. Medical Marijuana.

a. A Medical Marijuana Products Manufacturer may Transfer Medical Marijuana to another Medical Marijuana Products Manufacturer, a Medical Marijuana Store, a Marijuana Research and Development Facility or a Pesticide Manufacturer.

3. Sampling Units. A Medical Marijuana Products Manufacturer may also Transfer Sampling Units of its own Medical Marijuana Products and Medical Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-503(10), C.R.S., and Rule 5-320.

C. Manufacture of Medical Marijuana Concentrate, Medical Marijuana Product, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana Authorized. A Medical Marijuana Products Manufacturer may manufacture, prepare, package, and label Medical Marijuana Concentrate Medical Marijuana Product comprised of Medical Marijuana and other Ingredients intended for use or consumption, such as Edible Medical Marijuana Products, ointments, or tinctures. A Medical Marijuana Products Manufacturer may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

1. ~~Industrial~~ Hemp Product Authorized. ~~This subparagraph (C)(1) is effective July 1, 2020.~~ A Medical Marijuana Products Manufacturer that uses ~~Industrial~~ Hemp Product as an Ingredient in the manufacture and preparation of Medical Marijuana Product must comply with this subparagraph (C)(1) of this Rule.

a. Prior to accepting and taking possession of any ~~Industrial~~ Hemp Product for use as an Ingredient in a Medical Marijuana Product the Medical Marijuana Products Manufacturer shall verify the following:

i. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Medical Marijuana Testing Facility; and

ii. That the Person Transferring the ~~Industrial~~ Hemp Product to the Medical Marijuana Products Manufacturer is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

D. Location Prohibited. A Medical Marijuana Products Manufacturer may not manufacture, prepare, package, store, or label Medical Marijuana Product in a location that is operating as a retail food establishment.

E. Samples Provided for Testing.

1. A Medical Marijuana Products Manufacturer may provide samples of its Medical Marijuana Concentrate or Medical Marijuana Product to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Products Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. A Medical Marijuana Products Manufacturer is authorized to utilize a Medical Marijuana Transporter for transportation of its Medical Marijuana Product or Medical Marijuana Concentrate so long as the place where transportation orders are taken is a licensed Medical Marijuana Business and the transportation order is delivered to a Medical Marijuana Business, or Pesticide Manufacturer. Nothing in this Rule prevents a Medical Marijuana Products Manufacturer from transporting its own Medical Marijuana or Medical Marijuana Concentrate.

G. Performance-Based Incentives. A Medical Marijuana Products Manufacturer may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Medical Marijuana Products Manufacturer may not compensate a Sampling Manager using Sampling Units. *See* Rule 5-320 – Sampling Unit Protocols.

H. Receipt of Retail Marijuana Concentrate. A Medical Marijuana Products Manufacturer may receive a Transfer of Retail Marijuana Concentrate in compliance with Rules 5-335, 6-335, and 6-730.

Basis and Purpose – 5-310

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(III), and 44-10-503, C.R.S. The Marijuana Code sets forth minimum requirements for written agreements between Medical Marijuana Products Manufacturers and Medical Marijuana Stores. Specifically, the written agreements must set forth the total amount of Medical Marijuana obtained from a Medical Marijuana Store to be used in the manufacturing process, and the total amount of Medical Marijuana Product to be manufactured from the Medical Marijuana obtained from the Medical Marijuana Store. This rule clarifies that the Division must approve such written agreements to ensure they meet those requirements. This rule also provides those acts that are generally limited or prohibited. This Rule 5-310 was previously Rule M 602, 1 CCR 212-1.

5-310 – Medical Marijuana Products Manufacturer: General Limitations or Prohibited Acts

A. Contract Required. Any contract required pursuant to section 44-10-503(3), C.R.S., shall contain such minimum requirements as to form and substance as required by statute. All contracts need

to be current and available for inspection on the Licensed Premises by the Division when requested. *See* Rule 3-905 – Business Records and Reporting.

B. Packaging and Labeling Standards Required. A Medical Marijuana Products Manufacturer is prohibited from Transferring Medical Marijuana Concentrate or Medical Marijuana Product that are not properly packaged and labeled. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety

C. Transfer to Patient Prohibited. A Medical Marijuana Products Manufacturer is prohibited from Transferring Medical Marijuana to a patient. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-503(10), C.R.S., and Rule 5-320.

D. Adequate Care of Perishable Product. A Medical Marijuana Products Manufacturer must provide adequate refrigeration for perishable Medical Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

E. Homogeneity of Edible Medical Marijuana Product. A Medical Marijuana Products Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Medical Marijuana Product is homogenous.

F. Use of Ingredients. A Medical Marijuana Products Manufacturer must obtain and maintain certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers.

G. Corrective and Preventive Action. This paragraph G shall be effective January 1, 2021. A Medical Marijuana Products Manufacturer shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

H. Adverse Health Event Reporting. A Medical Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 5-315

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(i), 44-10-401(2)(a)(III), and 44-10-503, C.R.S. The purpose of this rule is to establish the categories of Medical Marijuana Concentrate that may be produced at a Medical Marijuana Products Manufacturer and establish standards for the production of those concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S. This Rule 5-315 was previously Rule M 605, 1 CCR 212-1.

5-315 – Medical Marijuana Products Manufacturer: Medical Marijuana Concentrate Production.

A. Permitted Categories of Medical Marijuana Concentrate Production.

1. A Medical Marijuana Products Manufacturer may produce Physical Separation-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, and Heat/Pressure-Based Medical Marijuana Concentrate

2. A Medical Marijuana Products Manufacturer may also produce Solvent-Based Medical Marijuana Concentrate using only the following solvents: butane, propane, CO_2, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless it is approved by the Division.

3. A Medical Marijuana Products Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next formal rulemaking.

B. General Applicability. A Medical Marijuana Products Manufacturer that engages in the production of Medical Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Medical Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. *See* Rule 3-905 – Business Records Required.

2. Ensure that all applicable sanitary rules are followed. *See* 3-300 Series Rules.

3. Ensure that the standard operating procedure for each method used to produce a Medical Marijuana Concentrate includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:

a. Conduct all necessary safety checks prior to commencing production;

b. Prepare Medical Marijuana for processing;

c. Extract Cannabinoids and other essential components of Medical Marijuana;

d. Purge any solvent or other unwanted components from a Medical Marijuana Concentrate,

e. Clean all equipment, counters and surfaces thoroughly; and

f. Dispose of any waste produced during the processing of Medical Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. *See* Rule 3-230 – Waste Disposal.

4. Establish written and documentable quality control procedures designed to maximize safety for Owner Licensees and Employee Licensees and minimize potential product contamination.

5. Establish written emergency procedures to be followed by Owner Licensees or Employee Licensees in case of a fire, chemical spill or other emergency.

6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Medical Marijuana Concentrate. The training manual must include, but need not be limited to, the following topics:

a. All standard operating procedures for each method of concentrate production used;

b. The Medical Marijuana Products Manufacturer's quality control procedures;

c. The emergency procedures;

d. The appropriate use of any necessary safety or sanitary equipment;

e. The hazards presented by all solvents used as described in the safety data sheet for each solvent;

f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and

g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner Licensee or Employee Licensee prior to that individual undertaking any step in the process of producing a Medical Marijuana Concentrate.

a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.

b. The individual training an Owner Licensee or Employee Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner Licensee or Employee Licensee can safely produce a Medical Marijuana Concentrate. *See* Rule 3-905 – Business Records Required.

c. The Owner Licensee or Employee Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional periodic cleaning required to

maintain compliance with all applicable sanitary rules. *See* Rule 3-905 – Business Records Required.

8. Maintain clear and comprehensive records of the name, signature and Owner Licensee or Employee License number of every individual who engaged in any step related to the creation of a Production Batch of Medical Marijuana Concentrate and the step that individual performed. *See* Rule 3-905 – Business Records Required.

C. Physical Separation-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, and Heat/Pressure-Based Medical Marijuana Concentrate. Medical Marijuana Products Manufacturer that engages in the production of a Medical Marijuana Concentrate must:

1. Ensure that all equipment, counters, and surfaces used in the production of a Medical Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.

2. Ensure that all equipment, counters, and surfaces used in the production of a Medical Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.

3. Ensure that any room in which dry ice is stored or used in processing Medical Marijuana into a Medical Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO_2.

4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Medical Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Physical Separation-Based Medical Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Medical Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.

7. Follow all of the rules related to the production of a Solvent-Based Medical Marijuana Concentrate if a pressurized system is used in the production of a Medical Marijuana Concentrate.

D. Solvent-Based Medical Marijuana Concentrate. A Medical Marijuana Products Manufacturer that engages in the production of Solvent-Based Medical Marijuana Concentrate must:

1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a local jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (http://www.iccsafe.org), the International Fire Code of 2012 (http://www.iccsafe.org) or the National Electric Code of 2014 (http://www.nfpa.org), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, which are available to the public;

a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Medical Marijuana into a Medical Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:

i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules, and regulations.

ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights, junction boxes, must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules, and regulations.

iii. Determine whether a gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

iv. Determine whether fire suppression system must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

b. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or CO_2 is stored, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Medical Marijuana Concentrate are to be produced, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

d. Material Change. If a Medical Marijuana Products Manufacturer makes a Material Change to its equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its equipment as well.

e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Medical Marijuana Products Manufacturer by the designer or manufacturer of any equipment used in the processing of Medical Marijuana into a Medical Marijuana Concentrate.

f. Records Retention. A Medical Marijuana Products Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule, or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Medical Marijuana Concentrate.

2. Ensure that all equipment, counters, and surfaces used in the production of a Solvent-Based Medical Marijuana Concentrate must be food-grade and must not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds, and fungi and can be easily cleaned;

3. Ensure that the room in which Solvent-Based Medical Marijuana Concentrate shall be produced must contain an emergency eye-wash station;

4. Ensure that a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Medical Marijuana Concentrate;

    a. UL or ETL Listing.

        i. If the system is UL or ETL listed, then a Medical Marijuana Products Manufacturer may use the system in accordance with the manufacturer's instructions.

        ii. If the system is UL or ETL listed but the Medical Marijuana Products Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Medical Marijuana Products Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

        iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

    b. Ethanol or Isopropanol. A Medical Marijuana Products Manufacturer Facility need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Medical Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

    a. A Medical Marijuana Products Manufacturer must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. A Medical Marijuana Products Manufacturer must maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. *See* Rule 3-905 – Business Records Required.

    b. A Medical Marijuana Products Manufacturer is prohibited from using denatured alcohol to produce a Medical Marijuana Concentrate, unless the denaturant is an approved solvent listed in Rule 5-315(A)(2) and the alcohol and the denaturant meet all other requirements set forth in this Rule.

6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Medical Marijuana Products Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;

7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Solvent-Based Medical Marijuana Concentrate; and

8. Ensure that a trained Owner Licensee or Employee Licensee is present at all times during the production of a Solvent-Based Medical Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.

9. Medical Marijuana Products Manufacturers Engaged in the Remediation of Medical Marijuana for elemental impurities. Medical Marijuana Products Manufacturers engaged in the Remediation of Medical Marijuana for elemental impurities shall:

    a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

        i. If potentially contaminated equipment, ingredients, or solvents used in the Remediation process are used for processing other 'non Remediated' material, the subsequent Production Batch made using the equipment, ingredients, or solvent must then be tested for elemental impurities, and the Production Batch made using that equipment, ingredients, or solvents is not eligible for testing exemptions through a Reduced Testing Allowance or otherwise exempt from required testing.

        ii. Manufacturers must document the equipment and lots of ingredients/solvents used in Remediation to ensure this requirement is met.

    b. Register as a hazardous waste generator, obtain a U.S. Environmental Protection Agency ID number for manifesting hazardous waste, and must have a disposal contract in place with a hazardous waste management company prior to attempting Remediation.

    c. Have a staff member who has received basic training in hazardous waste identification, storage, and disposal procedures, or hire a consultant who satisfies this criteria.

    d. Regardless of which type of analyte, if the Medical Marijuana flower, wet whole plant, or trim has failed elemental impurities testing, the Licensee must implement Standard Operating Procedures to ensure:

        i. That contaminated material is stored in a labeled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

        ii. That when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated

from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards Institute (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

A. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

e. Additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the Licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

f. These steps must be documented in the Licensee's respiratory protection program that all employees exposed to plant material or waste products contaminated with elemental impurities must be trained on.

g. The Licensee must establish and train employees on standard operating procedures designed to safely handle this contaminated material and prevent cross contamination.

h. Mercury poses additional workplaces hazards since it is easily volatilized and since mercury vapor is highly toxic. Before attempting to remediate any Regulated Marijuana flower, wet whole plant, or trim that has failed elemental impurities testing and contains mercury, Licensees must additionally:

i. Work with a certified industrial hygienist to develop and implement some form of monitoring program that is capable of detecting mercury vapor concentrations in the areas where material contaminated with mercury will be processed and can be used to generate time weighted average exposures to mercury vapor. The monitoring system must be sufficient to ensure airborne concentrations of mercury do not exceed Occupational Safety and Health Administration Permissible Exposure Limits for Airborne Contaminants.

ii. Have a certified industrial hygienist approve the Licensee's air handling system for managing mercury vapors in a fashion that is compliant with the Occupational Safety and Health Administration, and other applicable federal, state, and local regulations.

iii. Utilize a National Institute for Occupational Safety and Health rated half mask respirator with cartridges rated specifically for mercury vapor.

i. A Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

10. Medical Marijuana Products Manufacturer Engaged in the Remediation of Medical Marijuana for Microbial Contamination. Medical Marijuana Products Manufacturers engaged in the Remediation of Medical Marijuana for microbial contamination shall:

    a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

    b. Ensure that contaminated material is stored in a labeled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

    c. Ensure that when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

        i. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

    d. Implement additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the Licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

    e. These steps must be documented in the Licensee's respiratory protection program that all employees exposed to plant material or waste products contaminated with elemental impurities must be trained on.

    f. The Licensee must establish and train employees on standard operating procedures designed to safely handle this contaminated material and prevent cross contamination.

    g. The Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

E. Ethanol and Isopropanol. If a Medical Marijuana Products Manufacturer only produces Solvent-Based Medical Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from the requirements in paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Medical Marijuana Products Manufacturer shall comply with contaminant testing required in Rule 4-120(C)(3).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-320

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(III), and 44-10-503 C.R.S. The purpose of this rule is to establish the circumstances under which a Medical Marijuana Products Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting, and recordkeeping requirements on a Medical Marijuana Products Manufacturer that Transfer Sampling Units. This Rule 5-320 was previously Rule M 606, 1 CCR 212-1.

5-320 – Medical Marijuana Products Manufacturer: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Medical Marijuana Products Manufacturer may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Medical Marijuana Products Manufacturer who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual designated as a Sampling Manager by a Medical Marijuana Products Manufacturer must possess a valid patient registry card.

3. An individual may be designated as a Sampling Manager by more than one Medical Marijuana Business.

4. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

5. A Medical Marijuana Products Manufacturer that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-503(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 5-320. *See also* Rule 3-905 – Business Records Required. A Medical Marijuana Products Manufacturer shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Edible Medical Marijuana Product shall not exceed one serving size. Before designating any Sampling Units, a Medical Marijuana Products Manufacturer shall establish the specific serving size for each Edible Medical Marijuana Product it produces and maintain a record of the serving size in its standard operating procedures provided pursuant to subparagraph (A)(5).

2. A Sampling Unit of non-Edible Medical Marijuana Product shall not exceed the equivalent of one serving size. Before designating any Sampling Units, a Medical Marijuana Products Manufacturer shall establish the specific serving size for each non-Edible Medical Marijuana Product it produces and maintain a record of the serving size in its standard operating procedures provided pursuant to subparagraph (A)(5).

3. A Sampling Unit of Medical Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Medical Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Medical Marijuana Products Manufacturer as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:

a. Fourteen servings of Medical Marijuana Products; and

b. Fifteen grams of Medical Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Medical Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Medical Marijuana Products Manufacturer shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any Person designated as a Sampling Manager.

D. Compensation Prohibited. A Medical Marijuana Products Manufacturer may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-503(10), C.R.S.

G. Record keeping requirements. A Medical Marijuana Products Manufacturer shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, A Medical Marijuana Products Manufacturer shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Medical Marijuana Products Manufacturer shall also maintain copies of the Medical Marijuana Products Manufacturer's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-325

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(i), 44-10-203(3)(b), 44-10-203(2)(d), 44-10-203(3)(a), 44-10-401(2)(a)(III), 44-10-503, and 44-10-701(3)(c), C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Medical Marijuana Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule 3-1015 may raise public health concerns that outweigh its manufacturer or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Medical Marijuana Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Medical Marijuana Product that is not within an intended use identified in Rule 3-1015. This Rule 5-325 was previously Rule M 607, 1 CCR 212-1.

5-325 – Medical Marijuana Products Manufacturer: Audited Product and Alternative Use Product

A. General Rule. A Medical Marijuana Products Manufacturer shall not Transfer Audited Product to a Medical Marijuana Store, another Medical Marijuana Products Manufacturer, or a Medical Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule 5-325. The requirements of this Rule 5-325 are in addition to all other Rules that apply to Medical Marijuana Products Manufacturers; except where the context otherwise clearly requires this Rule 5-325 controls.

B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and to the Local Licensing Authority as required by this Rule, a Medical Marijuana Products Manufacturer may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (4) rectal administration to another Medical Marijuana Products Manufacturer, a Medical Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit, or a Medical Marijuana Store.

1. A written audit report from an independent third-party auditor that was completed within the last twenty-four (24) months shall be submitted to the Division and to the Local Licensing Authority: (i) before the first Transfer of Audited Product to any Medical Marijuana Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Medical Marijuana Products Manufacturer's renewal application if the Medical Marijuana Products Manufacturer will Transfer Audited Product after renewal.

2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Medical Marijuana Products Manufacturer shall be responsible for all costs associated with obtaining the independent third-party audit.

3. The independent third-party written audit report shall include the following minimum requirements:

    a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;

    b. Establish that the Medical Marijuana Products Manufacturer and the Audited Product meet all requirements of this Rule 5-325, including but not limited to the

specific requirements of this Rule 5-325(C), 5-325(D), 5-325(E), 5-325(G), and 5-325(H);

c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;

d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Medical Marijuana Products Manufacturer adheres to all applicable standard operating procedures;

e. Verify, based upon a physical inspection, of any Licensed Premises that such Licensed Premises complies with the requirements of this Rule 5-325(E), including any Limited Access Area where the Audited Product is to be manufactured;

f. Include the independent third-party auditor's findings;

g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and

h. Include the independent third-party auditor's assessment that the Medical Marijuana Products Manufacturer demonstrated compliance with all requirements of Rule 5-325 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.

C. Products Liability Insurance. Any Medical Marijuana Products Manufacturer that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:

1. Inactive Ingredients. Audited Product must meet the requirements outlined in Rule 3-335 – Production of Regulated Marijuana Products.

a. If the Audited Product contains a fungicidal or bactericidal Ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, the Audited Product is not required to undergo microbial contaminant testing required by Rules 4-115 and 4-120.

2. Required Product Development Testing. The Medical Marijuana Products Manufacturer must establish the Audited Product meets the following through independent third-party testing:

a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Medical

Marijuana Products Manufacturer, as demonstrated by testing at a Medical Marijuana Testing Facility.

i. For Audited Product with an intended use of metered dose nasal spray, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.

ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Medical Marijuana Testing Facility.

c. Identification of all non-marijuana derived Ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:

i. Testing by a Medical Marijuana Testing Facility;

ii. Testing by a laboratory that is ISO 17025 accredited but is not a Medical Marijuana Testing Facility, except that no Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product may be Transferred to such a laboratory; and/or

iii. One or more certificate(s) of analysis from the manufacturer of any Ingredient or constituent included in the Audited Product.

E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Medical Marijuana Products Manufacturers, a Medical Marijuana Products Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:

1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Medical Marijuana Products Manufacturer's Licensed Premises. Personnel directly involved in the manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.

2. Facility Requirements. A Medical Marijuana Products Manufacturer must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.

3. Cleaning and Sanitizing. A Medical Marijuana Products Manufacturer must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. A Medical Marijuana Products Manufacturer must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.

4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.

    a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Employee Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.

6. Ingredient Quality. All Ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the Ingredient or after 1 year from the date of receipt, whichever period is shorter.

7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited Product a Medical Marijuana Products Manufacturer manufactures. A master formulation record must include at least the following information:

    a. Name of the Audited Product;

    b. Ingredient identities and amounts;

    c. Specifications on the delivery device (if applicable);

    d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;

    e. Quality control procedures; and

    f. Any other information needed to describe the Medical Marijuana Products Manufacturer's production and ensure its repeatability.

8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:

    a. Name of the Audited Product;

    b. Master formulation record reference for the Audited Product;

    c. Date and time of preparation of the Audited Product;

d. Production Batch number;

e. Signature or initials of individuals involved in each manufacturing step;

f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each Ingredient;

g. Weight or measurement of each Ingredient;

h. Documentation of quality control procedures;

i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and

j. Total quantity of the Audited Product manufactured.

F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in the 4-100 Series Rules for Medical Marijuana Product and/or Audited Product. *See also* Rule 4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program.

G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the 3-1000 Series Rules regarding packaging and labeling for Transfer to a patient prior to any Transfer.

H. Adverse Event Reporting. A Medical Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

I. Alternative Use Designation – Any Other Method of Consumption or Administration. A Medical Marijuana Products Manufacturer shall not Transfer to a Medical Marijuana Store, to another Medical Marijuana Products Manufacturer, or a Medical Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit any Medical Marijuana Concentrate or Medical Marijuana Product that is not within any intended use identified in Rule 3-1015(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Medical Marijuana Products Manufacturer shall work with the Division and the Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:

1. The Medical Marijuana Products Manufacturer shall identify provisions of this Rule 5-325 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Medical Marijuana Products Manufacturer shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.

2. The Medical Marijuana Products Manufacturer bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards and tests are in place.

3. A Medical Marijuana Products Manufacturer seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Medical Marijuana Products Manufacturer does not meet the burden established in this Rule 5-325.

J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Medical Marijuana Products Manufacturer the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. *See* Rules 3-1010 and 3-1015.

K. Required Records. A Medical Marijuana Products Manufacturer manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive Ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule 5-325. *See* Rule 3-905 – Business Records Required.

5-330 – Recall of Medical Marijuana Concentrate or Medical Marijuana Product – Repealed effective January 1, 2021.

Basis and Purpose – 5-335

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(III), and 44-10-503, 44-10-503(12)(a)-(b), and 39-28.8-297, C.R.S. The purpose of this rule is to allow a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from "Retail" to "Medical."

5-335 – Medical Marijuana Products Manufacturer: Ability to Change Designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate.

A. Changing Designation: Beginning July 1, 2022, a Medical Marijuana Products Manufacturer may accept Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate pursuant to the following requirements:

1. The Medical Marijuana Products Manufacturer may only accept Retail Marijuana Concentrate that has passed all required testing;

2. The Medical Marijuana Products Manufacturer and the Retail Marijuana Products Manufacturer share a Licensed Premises in accordance with Rule 3-215;

3. The Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer have at least one identical Controlling Beneficial Owner;

4. The Medical Marijuana Products Manufacturer must receive the Transfer and designate the inventory as Medical Marijuana Concentrate in the Inventory Tracking System the same day. The Medical Marijuana Products Manufacturer must assign and attach an

RFID tag reflecting its Medical Marijuana Products Manufacturer license number to the Medical Marijuana Concentrate following completion of the Transfer in the Inventory Tracking System;

5. After the designation change, the Medical Marijuana Concentrate cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules; and

6. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

5-400 Series – Medical Marijuana Testing Facilities

Basis and Purpose – 5-405

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-313(14), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), C.R.S. The purpose of this rule is to establish the license privileges of a Medical Marijuana Testing Facility. This Rule 5-405 was previously Rule M 701.5, 1 CCR 212-1.

5-405 - Medical Marijuana Testing Facilities: License Privileges

A. Licensed Premises. A separate License is required for each specific Medical Marijuana Testing Facility and only those privileges granted by the Marijuana Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Medical Marijuana Testing Facility may share and operate at the same Licensed Premises with a Retail Marijuana Testing Facility with identical ownership.

B. Testing of Medical Marijuana Authorized. A Medical Marijuana Testing Facility may accept Samples of Medical Marijuana from Medical Marijuana Businesses for testing and research purposes only, which purposes may include the provision of testing services for Samples submitted by a Medical Marijuana Business for the purpose of product development. The Division may require a Medical Marijuana Business to submit a Sample of Medical Marijuana to a Medical Marijuana Testing Facility upon demand.

C. Testing of ~~Industrial~~ Hemp Product Authorized.

1. A Medical Marijuana Testing Facility may accept and test samples of ~~Industrial~~ Hemp Products.

2. Before a Medical Marijuana Testing Facility accepts a sample of ~~Industrial~~ Hemp Product, the Medical Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

3. A Medical Marijuana Testing Facility is responsible for entering and tracking samples of ~~Industrial~~ Hemp Product in the inventory tracking system pursuant to the 3-800 Series Rules.

4. A Medical Marijuana Testing Facility shall be permitted to test ~~Industrial~~ Hemp Product only in the category(ies) that the Medical Marijuana Testing Facility is certified to perform

testing in pursuant to Rule 5-415 – Medical Marijuana Testing Facilities: Certification Requirements.

5. A Medical Marijuana Testing Facility may provide the results of any testing performed on ~~Industrial~~ Hemp Product to the Person submitting the sample of ~~Industrial~~ Hemp Product.

6. Nothing in these rules shall be construed to require a Medical Marijuana Testing Facility to accept and/or test samples of ~~Industrial~~ Hemp Product.

D. Testing Medical Marijuana for Patients in Research Project. A Medical Marijuana Testing Facility is authorized to accept Samples of Medical Marijuana from an individual person for testing under only the following conditions:

1. The individual person is:

   a. A currently registered patient pursuant to section 25-1.5-106, C.R.S.; and

   b. A participant in an approved clinical or observational study conducted by a Marijuana Research and Development Facility.

2. The Medical Marijuana Testing Facility shall require the patient to produce a valid patient registry card and a current and valid photo identification. *See* Rule 3-405(A) – Acceptable Forms of Identification.

3. The Medical Marijuana Testing Facility shall require the patient to produce verification on a form approved by the Division from the Marijuana Research and Development Facility that the patient is a participant in an approved clinical or observational Research Project conducted by the Marijuana Research and Development Facility and that the testing will be in furtherance of the approved Research Project.

4. A primary caregiver may transport Medical Marijuana on behalf of a patient to the Medical Marijuana Testing Facility. A Medical Marijuana Testing Facility shall require the following documentation before accepting Medical Marijuana from a primary caregiver:

   a. A copy of the patient registry card and valid photo identification for the patient;

   b. A copy of the caregiver's registration with the State Department of Health pursuant to section 25-1.5-106, C.R.S. and a current and valid photo identification, *see* Rule 3-405 – Acceptable Forms of Identification; and

   c. A copy of the Marijuana Research and Development Facility's verification on a form approved by the Division that the patient is participating in an approved clinical or observational Research Project being conducted by the Marijuana Research and Development Facility and that the testing will be in furtherance of the approved Research Project.

5. The Medical Marijuana Testing Facility shall report all results of testing performed pursuant to this Paragraph (C.5) to the Marijuana Research and Development Facility identified in the verification form submitted pursuant to Paragraph (D)(3) or (4)(c), or as otherwise directed by the approved Research Project being conducted by the Marijuana Research and Development Facility. Testing result reporting shall conform with the requirements under these Rules.

E. Product Development Authorized. A Medical Marijuana Testing Facility may develop Medical Marijuana Product, but is not authorized to engage in the manufacturing privileges described in

section 44-10-503, C.R.S. and Rule 5-305 – Medical Marijuana Products Manufacturer: License Privileges.

F. Transferring Samples to Another Licensed and Certified Medical Marijuana Testing Facility. A Medical Marijuana Testing Facility may Transfer Samples to another Medical Marijuana Testing Facility for testing. All laboratory reports provided to or by a Medical Marijuana Business, or to a patient or primary caregiver must identify the Medical Marijuana Testing Facility that actually conducted the test.

G. Authorized Medical Marijuana Transport. A Medical Marijuana Testing Facility is authorized to utilize a licensed Medical Marijuana Transporter to transport Samples of Medical Marijuana for testing, in accordance with the Marijuana Code and the rules adopted pursuant thereto, between the originating Medical Marijuana Business requesting testing services and the destination Medical Marijuana Testing Facility performing testing services. Nothing in this Rule requires a Medical Marijuana Business to utilize a Medical Marijuana Transporter to transport Samples of Medical Marijuana for testing.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-410

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), 44-10-701, and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Medical Marijuana Testing Facility. This Rule 5-410 was previously Rule M 702, 1 CCR 212-1.

5-410 – Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is a Controlling Beneficial Owner or Passive Beneficial Owner of a Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturing Facility, Medical Marijuana Store, Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or a Retail Marijuana Store shall not be a Controlling Beneficial Owner or Passive Beneficial Owner of a Medical Marijuana Testing Facility.

B. Conflicts of Interest. The Medical Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Medical Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality, and integrity of the Medical Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Medical Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Medical Marijuana Business that provided the Sample.

C. Transfer of Medical Marijuana Prohibited. A Medical Marijuana Testing Facility shall not Transfer Medical Marijuana to a Medical Marijuana Business, a consumer, a patient, or primary caregiver, except that a Medical Marijuana Testing Facility may Transfer a Sample to another Medical Marijuana Testing Facility.

D. Destruction of Received Samples. A Medical Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Medical Marijuana Testing Facility,

after all necessary tests have been conducted and any required period of storage. *See* Rule 3-230 – Waste Disposal.

E. Sample Rejection. A Medical Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that that the Sample may have been tampered with.

F. Medical Marijuana Business Requirements Applicable. A Medical Marijuana Testing Facility shall be considered a Licensed Premises. A Medical Marijuana Testing Facility shall be subject to all requirements applicable to Medical Marijuana Businesses.

G. Medical Marijuana Testing Facility – Inventory Tracking System Required. A Medical Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Medical Marijuana are identified and tracked from the point they are Transferred from a Medical Marijuana Business, a patient, or a patient's primary caregiver through the point of Transfer, destruction, or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Medical Marijuana. *See* Rule 3-805 – Regulated Marijuana Business: Inventory Tracking System, Rule 3-825 – Reporting and Inventory Tracking System, and Rule 5-405(D)(5). The Medical Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. *See* Rule 3-905 – Business Records Required and Rule 3-825 Reporting and Inventory Tracking

H. ~~Industrial~~ Hemp Testing Prohibited. A Medical Marijuana Testing Facility shall not perform testing on ~~Industrial~~ Hemp.

I. Testing of Unregistered or Untracked ~~Industrial~~ Hemp Products Prohibited. A Medical Marijuana Testing Facility is authorized to accept or test ~~Industrial~~ Hemp Product only if (1) the entity providing the Samples of ~~Industrial~~ Hemp Product is registered and regulated pursuant to Article 4 or Title 25, C.R.S., and (2) the ~~Industrial~~ Hemp Product being submitted for testing is tracked in the Inventory Tracking System.

J. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-415

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish a frame work for certification for Medical Marijuana Testing Facilities. This Rule 5-415 was previously Rule M 703, 1 CCR 212-1.

5-415 – Medical Marijuana Testing Facilities: Certification Requirements

A. Certification Types. If certification in a testing category is required by the Division, then the Medical Marijuana Testing Facility must be certified in the category in order to perform that type of testing.

1. Microbials;

2. Mycotoxins;

3. Residual solvents;

4. Pesticides;

5. THC and other Cannabinoid potency;

6. Elemental Impurities; and

7. Water Activity.

B. In order to obtain certification for Pesticide testing, a Medical Marijuana Testing Facility must also obtain certification for mycotoxin testing.

C. Certification Procedures. The Medical Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in Proficiency Testing, and ongoing compliance with the applicable requirements in this Rule.

1. Certification Inspection. A Medical Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Medical Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting. In addition, a Medical Marijuana Testing Facility must be accredited under the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO/IEC 17025 standard. In order to obtain certification in a testing category from the Division, the Medical Marijuana Testing Facility's scope of accreditation must specify that particular testing category.

   a. Subsequent to initial approval of a Medical Marijuana Testing Facility License, the Division may grant provisional certification if the Applicant has not yet obtained ISO/IEC 17025:2005 accreditation, but meets all other Division requirements. Such provisional certification shall be for a period not to exceed twelve months.

3. Personnel Qualifications.

   a. Laboratory Director. A Medical Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. *See* Rule 5-420 – Medical Marijuana Testing Facilities: Personnel.

   b. Employee Competency. A Medical Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Medical Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign and date the revised version prior to use.

b. A Medical Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. *See* Rule 5-450 – Medical Marijuana Testing Facilities: Records Retention and Rule 3-905 – Business Records Required.

5. Analytical Processes. A Medical Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Medical Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Medical Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Medical Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Medical Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Medical Marijuana Testing Facility must establish a system to document the complete chain of custody for Samples from receipt through disposal.

10. Space. A Medical Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state and local requirements.

11. Records. A Medical Marijuana Testing Facility must establish a system to retain and maintain all required records. *See* Rule 5-450 – Medical Marijuana Testing Facilities: Records Retention and Rule 3-905 – Business Records Required.

12. Results Reporting. A Medical Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. *See* Rule 3-825 – Reporting and Inventory Tracking System. A Medical Marijuana Testing Facility's process may require that the Regulated Marijuana Business remit payment for any test conducted by the Testing Facility prior to entry of the results of that test into the Inventory Tracking System. A Medical Marijuana Testing Facility's process established under this subparagraph (12) must be maintained on the Licensed Premises of the Medical Marijuana Testing Facility.

13. Conduct While Seeking Certification. A Medical Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner.

D. Violation Affecting Public Safety. A violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose – 5-420

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-420 was previously Rule M 704, 1 CCR 212-1.

5-420 – Medical Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Medical Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Medical Marijuana Testing Facility.

2. The laboratory director for a Medical Marijuana Testing Facility must meet one of the following qualification requirements:

a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;

b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;

c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

d. The laboratory director must hold a bachelor's degree in one of the natural sciences and have at least seven years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. *See* Rule 3-905 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Medical Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interest, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

D. Change in Laboratory Director. In the event that the laboratory director leaves employment at the Medical Marijuana Testing Facility, the Medical Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Division within seven days of the laboratory director's departure; and

2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.

3. The Medical Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.

4. Notwithstanding the requirement of subparagraph (D)(3), the Medical Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Medical Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

E. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and two years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the two years of full-time laboratory experience.

Please Note: *The following revisions are clean-up from rule revisions adopted in 2022, as proposed by the Science & Policy Work Group.*

F. Laboratory Testing Analyst.

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or:

a. Have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing;

b. ~~Have at least a bachelor's degree in one of the natural sciences;~~

~~c~~. Have earned an associated degree in a laboratory science from an accredited institution; or

~~d~~c. Have education and training equivalent to that specified in subparagraph (F)(1) of this Rule that includes at least 60 semester hours, or equivalent, from an accredited institution that, at a minimum, include:

i. 24 semester hours of science courses that include six semester hours of chemistry, six semester hours of biology, and twelve semester hours of chemistry, biology, or cannabis laboratory sciences in any combination; and

ii. Have a laboratory training that includes at least three months documented laboratory training each testing category in which the individual performs testing; or

~~e~~d. Have at least five years of full time experience in laboratory testing and have laboratory training that includes at least three months documented laboratory training in each testing category in which the individual performs testing.

2. Responsibilities. In order to independently perform any test for a Medical Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-425

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish standard operating procedures manual standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-425 was previously Rule M 705, 1 CCR 212-1.

5-425 – Medical Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Test Batch receiving;

2. Test Batch accessioning;

3. Test Batch storage;

4. Identifying, rejecting, and reporting unacceptable Test Batches;

5. Recording and reporting discrepancies during Test Batch receiving and accessioning;

6. Security of Test Batches, aliquots and extracts and records;

7. Validating a new or revised method prior to testing of Test Batches to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Test Batch preparation, including but not limited to, sub-sampling for testing, homogenization, and aliquoting Test Batches to avoid contamination and carry-over;

9. Test Batch archive retention to assure stability, as follows:

a. For Test Batches submitted for testing other than Pesticide contaminant testing, Test Batch archive retention for 14 days;

b. For Test Batches submitted for Pesticide contaminant testing, Test Batch retention for 90 days.

10. Disposal of Test Batches;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology ("NIST");

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and Test Batch results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results and are corrective actions implemented and documented, and does the laboratory contact the requesting entity;

21. Policies and procedures to follow when Test Batches are requested for referral and testing by another certified Medical Marijuana Testing Facility or an approved local state agency's laboratory;

22. Investigating and documenting existing or potential Nonconformances and implementing Corrective Actions and/or Preventive Actions;

23. Contacting the requesting entity about existing Nonconformances; and

24. Retesting or additional analyses of Test Batches, including but ne not be limited to, when it is appropriate to retest or perform an additional analysis of the Test Batch, when it is appropriate for the requesting entity to request retesting (e.g., after failing Pesticide testing or elemental impurity testing on Regulated Marijuana flower, trim, shake, or wet whole plant as permitted by Rule 4-135(D) and 4-135(D.1)).

B. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-430

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-430 was previously Rule M 706, 1 CCR 212-1.

5-430 – Medical Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Medical Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;

2. Perform and document preventive maintenance as required by the manufacturer;

3. Ensure that records are maintained and readily available to the staff operating the equipment;

4. Document the performance of new columns before use;

5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Medical Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Document the changes of septa as specified in the standard operating procedure;

3. Document liners being cleaned or replaced as specified in the standard operating procedure;

4. Ensure that records are maintained and readily available to the staff operating the equipment;

5. Maintain records of mass spectrometric tuning;

6. Establish written criteria for an acceptable mass-spectrometric tune;

7. Document corrective actions if a mass-spectrometric tune is unacceptable;

8. Monitor analytic analyses to check for contamination and carry-over;

9. Use selected ion monitoring within each run to assure that the laboratory compares ion ratios and retention times between calibrators, controls and samples for identification of an analyte;

10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;

12. Define the criteria for designating qualitative results as positive;

13. When a library is used to qualitatively identify an analyte, the identity of the analyte must be confirmed before reporting results by comparing the relative retention time and mass spectrum to that of a known standard or control run on the same system; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g.* clipping or replacing the column or cleaning the source) prior to analyzing subject Samples.

C. Immunoassays. A Medical Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a sample is not included within the types of samples approved by the manufacturer; and

4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Medical Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;

2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;

3. Include in their written procedure the storage of unused thin layer chromatographic plates;

4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;

5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;

6. Measure all appropriate RF values for qualitative identification purposes;

7. Use and record sequential color reactions, when applicable;

8. Maintain records of thin layer chromatographic plates; and

9. Analyze an appropriate matrix blank with each batch of samples analyzed.

E. High Performance Liquid Chromatography ("HPLC"). A Medical Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Monitor and document the performance of the HPLC instrument each day of testing;

4. Evaluate the performance of new columns before use;

5. Create written standards for acceptability when eluting solvents are recycled;

6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Medical Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Maintain records of mass spectrometric tuning;

4. Document corrective actions if a mass-spectrometric tune is unacceptable;

5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;

7. Compare two transitions and retention times between calibrators, controls and samples within each run;

8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and

9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Microbial Assays. A Medical Marijuana Testing Facility using microbial assays must:

1. Perform and document preventive maintenance as required by the manufacturer and standard operating procedures;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a test sample submitted for testing is not included within the types of Test Batches approved by the manufacturer;

4. Verify the method at the action levels for each analyte. Verification at the qualitative presence/absence limit shall include a fractional recovery study unless otherwise completed by the manufacturer and approved by an independent scientific body.

5. Include controls for each batch of test samples. Quantitative microbial methods shall use controls of a specific known value or set of values that lies within the quantifiable range of the method;

6. For molecular methods, the Medical Marijuana Testing Facility shall include controls for each individual analytical run. Quantitative molecular methods shall use controls of a specific known value or set of values that lies within the quantifiable range of the method;

7. PCR-based and qPCR-based methods must include validated internal amplification controls;

8. Microbial methods must include steps to confirm presumptive positive results; confirmation methods may be molecular or cultural or both. Confirmation methods must include quality controls that match the organism which is being confirmed.

H. Water Activity. A Medical Marijuana Testing Facility analyzing water activity must:

1. Perform and document preventive maintenance as required by the manufacturer and standard operating procedures;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Specify all unique method parameters, such as temperature, test sample surface area, volatile compound interferences, including but not limited to temperature;

4. Evaluate the performance of the method after routine and preventive maintenance prior to analyzing the Test Batch;

5. Establish criteria for acceptable instrument performance.

I. Analytical Methodology. A Medical Marijuana Testing Facility must validate new methodology and revalidate any changes to approved methodology prior to testing Test Batches. A Medical Marijuana Testing Facility must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:

a. Verification of Accuracy

b. Verification of Precision

c. Verification of Analytical Sensitivity

d. Verification of Analytical Specificity

e. Verification of the LOD

f. Verification of the LOQ

g. Verification of the Reportable Range

h. Identification of Interfering Substances

2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing samples.

J. Testing and Validation of Complex Matrices. A Medical Marijuana Testing Facility must include a variety of matrices as part of the validation/verification process. During method validation/verification, a Medical Marijuana Testing Facility must:

1. Select matrices which best represent each category of products to be tested as listed in Rule 4-115(D). The laboratory shall independently determine the category of matrix a product falls within; properties to consider include fat content, cannabinoid content, pH, salt content, sugar content, water activity, the presence of know chemical compounds, microbial flora and antimicrobial compounds.

2. Perform a new matrix validation, prior to reporting results, on matrices which are either a new category of matrix or are considerably different from the original matrix validated within the category.

   a. For example, the Medical Marijuana Testing Facility intends to receive the topical product “bath bombs” for testing, but previous validation studies for topical product included lotion and massage oil. A new validation should be performed for the product prior to testing since salt content and other properties differ vastly from the original matrices validated.

3. Perform a matrix verification (a client matrix spike or similar consisting of the target analyte(s) at the time of analysis) on matrices submitted for testing which differ slightly from those initially validated but which fall within a category already validated.

   a. For example, the Medical Marijuana Testing Facility laboratory receives a new edible type matrix for testing (snickerdoodle cookies) but previous validation included gummies and hard candy. A spike of a portion of the submitted material must be analyzed prior to, or at the time of, sample analysis.

K. All Test Batches and ~~Industrial~~ Hemp Product must be tested as received, must not be manipulated, and tested in a manner that ensures results are representative of sample as received.

L. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-435

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish a proficiency testing program for Medical Marijuana Testing Facilities. This Rule 5-435 was previously Rule M 707, 1 CCR 212-1.

5-435 – Medical Marijuana Testing Facilities: Proficiency Testing

A. Proficiency Testing Required. A Medical Marijuana Testing Facility must participate in a Proficiency Testing Program for each approved category in which it seeks certification under Rule 5-415 – Medical Marijuana Testing Facilities: Certification Requirements.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Medical Marijuana Testing Facility must have successfully participated in a proficiency test in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Medical Marijuana Testing Facility must participate in the designated proficiency testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.

D. Analyzing Proficiency Testing Samples. A Medical Marijuana Testing Facility must analyze Proficiency Testing Samples using the same procedures with the same number of replicate analyses, standards, testing analysts, and equipment as used in its standard operating procedures.

E. Proficiency Testing Attestation. The laboratory director and all testing analysts that participated in a Proficiency Testing must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.

G. Remedial Action. A Medical Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during a Proficiency Test. Remedial action documentation must include a review of Samples tested and results reported since the last successful proficiency testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.

H. Unsatisfactory Participation in Proficiency Testing Event. Unless the Medical Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive results reported will be considered an unsatisfactory score for the proficiency testing event.

I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsuccessful participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule 5-415 certification.

J. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-440

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Medical Marijuana Testing Facility. This Rule 5-440 was previously Rule M 708, 1 CCR 212-1.

5-440 – Medical Marijuana Testing Facilities: Quality Assurance and Quality Control

A. Quality Assurance Program Required. A Medical Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to

identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

3. Review of the performance of validated methods used by the Medical Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Medical Marijuana Testing Facility must establish, monitor, and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the Standard Operating Procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the Standard Operating Procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current standard operating procedures manual for the test or tests to be performed.

C. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-445

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish chain of custody standards for a Medical Marijuana Testing Facility. In addition, it establishes the requirement that a Medical Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains. This Rule 5-445 was previously Rule M 709, 1 CCR 212-1.

5-445 – Medical Marijuana Testing Facilities: Chain of Custody

A. General Requirements. A Medical Marijuana Testing Facility must establish an adequate chain of custody and Test Batch requirement instructions that must include, but not be limited to;

1. Issue instructions for the minimum Test Batch requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Test Batch;

3. Document the condition and amount of Test Batch provided at the time of receipt;

4. Document all persons handling the original Test Batches, aliquots, and extracts;

5. Document all Transfers of Test Batches, aliquots, and extracts referred to another certified Medical Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Test Batches;

10. Ensure Test Batches are stored appropriately;

11. Document the disposal of Test Batches, aliquots, and extracts; and

12. Document the License number, Inventory Tracking System number, photograph(s), and the reason for rejection of Test Batches that were rejected to the Division within 7 days of Test Batch submission.

B. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-450

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish records retention standards for a Medical Marijuana Testing Facility. This Rule 5-450 was previously Rule M 710, 1 CCR 212-1.

5-450 – Medical Marijuana Testing Facilities: Records Retention

A. General Requirement. A Medical Marijuana Testing Facility must maintain all required business records. *See* Rule 3-905 - Business Records Required.

B. Specific Business Records Required: Records Retention. A Medical Marijuana Testing Facility must establish processes to preserve records in accordance with Rule 3-905 that includes, but is not limited to;

1. Test Results, including final and amended reports, and identification of analyst and date of analysis;

2. Quality Control and Quality Assurance Records, including accession numbers, Test Batch type, and acceptable reference range parameters;

3. Standard Operating Procedures;

4. Personnel Records;

5. Chain of Custody Records, including documentation of rejected Test Batches;

6. Proficiency Testing Records; and

7. Analytical Data to include data generated by the instrumentation, raw data calibration standards, and curves.

C. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-455

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), C.R.S. The purpose of this rule is to require Medical Marijuana Testing Facilities to provide failed test results to the Medical Marijuana Business or Person submitting the sample and to report any failed test result in the inventory tracking system. This Rule 5-455 was previously Rule M 712(D), 1 CCR 212-1.

5-455 – Notification of Medical Marijuana Business

If Medical Marijuana failed a contaminant test, then the Medical Marijuana Testing Facility must immediately (1) notify the Medical Marijuana Business that submitted the Test Batch or Sample for testing and any Person as directed by an approved Research Project being conducted by a Marijuana Research and Development Facility; and (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule 3-825(C).

Basis and Purpose – 5-460

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(3)(c), 44-10-401(2)(b)(IV), and 44-10-~~65~~04, C.R.S. The purpose of this rule is to establish a framework for suspending and reinstating a testing category certification for Medical Marijuana Testing Facilities. This rule also provides the ability for a Medical Marijuana Testing Facility to request a hearing following suspension of a testing category certification.

5-460 – Medical Marijuana Testing Facilities: Certification Suspension, Recertification, and Request for Hearing

A. Certification Suspension. When the Division has objective and reasonable grounds to believe and finds that a Medical Marijuana Testing Facility has been guilty of deliberate and willful violation(s) or that the public health, safety, or welfare imperatively require emergency action, the Division may immediately suspend the Medical Marijuana Testing Facility's testing category certification in accordance with section 24-4-104, C.R.S., and the 8-200 Series Rules.

B. Re-certification. A Medical Marijuana Testing Facility must provide evidence of corrective actions taken to resolve the certification suspension and may request that the Division re-certify the Medical Marijuana Testing Facility for a particular testing category in accordance with the requirements in Rule 5-415, if the Medical Marijuana Testing Facility provides documentation requested by the Division and/or the CDPHE demonstrating such corrective actions.

5-500 Series – Medical Marijuana Transporters

Basis and Purpose – 5-505

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-313(14), 44-10-401(2)(a)(V), 44-10-505, C.R.S. The purpose of this rule is to establish the license privileges of Medical Marijuana Transporter licensees. This Rule 5-505 was previously Rule M 1601, 1 CCR 212-1.

5-505 – Medical Marijuana Transporter: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Medical Marijuana Transporter may share a location with an identically owned Retail Marijuana Transporter.

However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Transportation of Medical Marijuana and Medical Marijuana Product Authorized. A Medical Marijuana Transporter may take transportation orders, receive, transport, temporarily store, and deliver Medical Marijuana to a Medical Marijuana Business, a Retail Marijuana Cultivation Facility or Accelerator Cultivator in accordance with Rules 5-235, 6-230, and 6-730, or to a Pesticide Manufacturer. A Medical Marijuana Transporter may not sell, give away, buy, or receive complimentary Medical Marijuana under any circumstances. A Medical Marijuana Transporter does not include a Licensee that transports its own Medical Marijuana.

C. Authorized Sources of Medical Marijuana. A Medical Marijuana Transporter may only transport and store Medical Marijuana that it receives directly from a Medical Marijuana Business in accordance with the 3-600 Series Rules.

D. Authorized On-Premises Storage. A Medical Marijuana Transporter is authorized to store transported Medical Marijuana on its Licensed Premises or permitted off-premises storage facility. All transported Medical Marijuana must be secured in a Limited Access Area, and tracked consistently with the inventory tracking rules.

E. Delivery to Patients Pursuant to Delivery Permit.

1. Prior to January 2, 2021, all Medical Marijuana Transporters are prohibited from delivering Regulated Marijuana to patients.

2. After January 2, 2021, only Medical Marijuana Transporters that possess a valid delivery permit may deliver Medical Marijuana pursuant to contracts with Medical Marijuana Stores that also possess valid delivery permits. All deliveries of Medical Marijuana to patients must comply with all requirements of Rule 3-615.

3. License Violation Affecting Public Safety. Any violation of subparagraph E of this Rule is a license violation affecting public safety.

Basis and Purpose – 5-510

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2)(a)(V), 44-10-505, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Medical Marijuana Transporter. This Rule 5-510 was previously Rule M 1602, 1 CCR 212-1.

5-510 – Medical Marijuana Transporter: General Limitations or Prohibited Acts

A. Sales, Liens, and Secured Interests Prohibited. A Medical Marijuana Transporter is prohibited from buying, selling, or giving away Medical Marijuana or from receiving complimentary Medical Marijuana. A Medical Marijuana Transporter shall not place or hold a lien or secured interest on Medical Marijuana.

B. Licensed Premises Permitted. A Medical Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily stores any Medical Marijuana, or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a local jurisdiction that authorizes the operation of Medical Marijuana Stores. If a Medical Marijuana Transporter Licensed Premises is shared with a Retail Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall be in a local jurisdiction that authorizes the operation of both Medical Marijuana Stores and Retail Marijuana Stores.

C. Off-Premises Storage Permit. A Medical Marijuana Transporter may maintain one or more permitted off-premises storage facilities. *See* Rule 3-610 – Off-Premises Storage of Regulated Marijuana and Regulated Marijuana Product: All Regulated Marijuana Businesses.

D. Storage Duration. A Medical Marijuana Transporter shall not store Medical Marijuana for longer than seven days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable seven day storage duration begins and applies regardless of which of the Medical Marijuana Transporter's premises receives the Medical Marijuana first, (i.e. the Medical Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities). A Medical Marijuana Transporter with a valid delivery permit may store Medical Marijuana for delivery to patients pursuant to the delivery permit for no longer than seven days from receipt at its Licensed Premises or off-premises storage facility.

E. Control of Medical Marijuana. A Medical Marijuana Transporter is responsible for the Medical Marijuana once it takes control of the Medical Marijuana and until the Medical Marijuana Transporter delivers it to another Medical Marijuana Business, Retail Marijuana Cultivation Facility or Accelerator Cultivator in accordance with Rules 5-235, 6-230, and 6-730, Pesticide Manufacturer, or deliveries to a patient, parent, or guardian pursuant to a valid delivery permit. For purposes of this Rule, taking control of the Medical Marijuana means removing it from the Medical Marijuana Business's Licensed Premises and placing the Medical Marijuana in the transport vehicle or the Delivery Motor Vehicle.

F. Location of Orders Taken and Delivered. A Medical Marijuana Transporter is permitted to take orders on the Licensed Premises of any Medical Marijuana Business to transport Medical Marijuana between Medical Marijuana Businesses. The Medical Marijuana Transporter shall deliver the Medical Marijuana to the Licensed Premises of a licensed Medical Marijuana Business, or Pesticide Manufacturer. A Medical Marijuana Transporter may also deliver Medical Marijuana to patients, parents, or guardians pursuant to a contract with a Medical Marijuana Store if it possesses a valid delivery permit.

G. A Medical Marijuana Transporter shall receive Medical Marijuana from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee, or Pesticide Manufacturer. The Medical Marijuana Transporter shall deliver the Medical Marijuana in the same, unaltered packaging to the final destination Licensee.

H. A Medical Marijuana Transporter with a valid delivery permit shall receive Medical Marijuana that has been weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Medical Marijuana Store or at the Medical Marijuana Store's off-premises storage facility after receipt of a delivery order. Medical Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Medical Marijuana has been packaged and labeled for delivery to the patient, parent, or guardian as required by the 3-1000 Series Rules.

I. A Medical Marijuana Transporter must not deliver Medical Marijuana to patients, parents, or guardians while also transporting Regulated Marijuana between Licensed Premises in the Delivery Motor Vehicle.

J. Opening of Sealed Packages or Containers and Re-Packaging Prohibited. A Medical Marijuana Transporter shall not open Containers of Medical Marijuana. Medical Marijuana Transporters are prohibited from re-packaging Medical Marijuana.

K. Temperature-Controlled Transport Vehicles. A Medical Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Medical Marijuana.

L. Damaged, Refused, or Undeliverable Medical Marijuana. Any damaged Medical Marijuana that is undeliverable to the final destination Medical Marijuana Business, or any Medical Marijuana that is refused by the final destination Medical Marijuana Business shall be transported back to the originating Medical Marijuana Business. Any Medical Marijuana that cannot be delivered to the patient, parent, or guardian pursuant to a valid delivery permit shall be returned to the originating Medical Marijuana Store or the Medical Marijuana Store's off-premises storage facility within the same business day or pursuant to paragraph D of this Rule.

M. Transport of Medical Marijuana Vegetative Plants Authorized. Medical Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule 2-255 or due to a one-time Transfer pursuant to Rule 3-805. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed. This restriction shall not apply to Immature plants.

5-600 Series – Medical Marijuana Business Operators

Basis and Purpose – 5-605

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to establish the license privileges of a Medical Marijuana Business Operator license. This Rule 5-605 was previously Rule M 1701, 1 CCR 212-1.

5-605 – Medical Marijuana Business Operator: License Privileges

A. Privileges Granted. A Medical Marijuana Business Operator shall only exercise those privileges granted to it by the Marijuana Code, the rules promulgated pursuant thereto and the State Licensing Authority. A Medical Marijuana Business Operator may exercise those privileges only on behalf of the Medical Marijuana Business(es) it operates. A Medical Marijuana Business shall not contract to have more than one Medical Marijuana Business Operator providing services to the Medical Marijuana Business at any given time. A Medical Marijuana Business Operator may not provide any operational services to a Marijuana Research and Development Facility.

B. Licensed Premises of the Medical Marijuana Business(es) Operated. A separate license is required for each specific Medical Marijuana Business Operator, and each licensed or registered Medical Marijuana Business Operator may operate one or more other Medical Marijuana Business(es). A Medical Marijuana Business Operator shall not have its own Licensed Premises, but shall maintain its own place of business, and may exercise the privileges of a Medical Marijuana Business Operator at the Licensed Premises of the Medical Marijuana Business(es) it operates.

C. Entities Eligible to Hold Medical Marijuana Business Operator License or Registration. A Medical Marijuana Business Operator license may be held only by a business entity, including, but not limited to, a corporation, limited liability company, partnership, or sole proprietorship.

D. Separate Place of Business. A Medical Marijuana Business Operator shall designate and maintain a place of business separate from the Licensed Premises of any Medical Marijuana Business(es) it operates. A Medical Marijuana Business Operator's separate place of business shall not be considered a Licensed Premises, and shall not be subject to the requirements applicable to the Licensed Premises of other Medical Marijuana Businesses, except as set forth in Rules 5-610 and 5-620. Possession, storage, use, cultivation, manufacture, sale, distribution, or testing of Medical Marijuana or Medical Marijuana Product is prohibited at a Medical Marijuana Business Operator's separate place of business.

E. Agency Relationship and Discipline for Violations. A Medical Marijuana Business Operator and each of its Controlling Beneficial Owners required to hold an Owner License, as well as the agents and employees of the Medical Marijuana Business Operator, shall be agents of the Medical Marijuana Business(es) the Medical Marijuana Business Operator is contracted to operate, when engaged in activities related, directly or indirectly, to the operation of such Medical Marijuana Business(es), including for purposes of taking administrative action against the Medical Marijuana Business being operated. *See* § 44-10-901(1), C.R.S. Similarly, a Medical Marijuana Business Operator and its Controlling Beneficial Owners required to hold an Owner License, as well as the officers, agents and employees of the Medical Marijuana Business Operator, may be disciplined for violations committed by the Controlling Beneficial Owners, agents or employees of the Medical Marijuana Business acting under their direction or control. A Medical Marijuana Business Operator may also be disciplined for violations not directly related to a Medical Marijuana Business it is operating.

F. Compliance with Applicable State and Local Law, Ordinances, Rules, and Regulations. A Medical Marijuana Business Operator, and each of its Controlling Beneficial Owners, agents and employees engaged, directly or indirectly, in the operation of the Medical Marijuana Business(es) it operates, shall comply with all state and local laws, ordinances, rules, and regulations applicable to the Medical Marijuana Business(es) being operated.

Basis and Purpose – 5-610

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Medical Marijuana Business Operator. This Rule 5-610 was previously Rule M 1702, 1 CCR 212-1.

5-610 – Medical Marijuana Business Operators: General Limitations or Prohibited Acts

A. Financial Interest. A Person who holds an Owner's Interest in a Medical Marijuana Business Operator may also hold an Owner's Interest in another Medical Marijuana Business. A Medical Marijuana Business may be operated by a Medical Marijuana Business Operator where each has one or more Controlling Beneficial Owners or Passive Beneficial Owners in common. A Person may receive compensation for services provided by a Medical Marijuana Business Operator in accordance with these rules.

B. Sale of Marijuana Prohibited. A Medical Marijuana Business Operator is prohibited from selling, distributing, or Transferring Medical Marijuana to another Medical Marijuana Business, a patient, or a consumer, except when acting as an agent of a Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator.

C. Consumption Prohibited. A Medical Marijuana Business Operator, and its Controlling Beneficial Owners, Passive Beneficial Owners, agents and employees, shall not permit the consumption of marijuana or marijuana products at its separate place of business.

D. Inventory Tracking System. A Medical Marijuana Business Operator, and any of its Controlling Beneficial Owners, agents, or employees engaged in the operation of the Medical Marijuana Business(es) it operates, must use the Inventory Tracking System account of the Medical Marijuana Business(es) it operates, in accordance with all requirements, limitations, and prohibitions applicable to the Medical Marijuana Business(es) it operates.

E. Compliance with Requirements and Limitations Applicable to the Medical Marijuana Business(es) Operated. In operating any other Medical Marijuana Business(es), a Medical Marijuana Business Operator, and its Controlling Beneficial Owners, agents and employees, shall comply with all requirements, limitations and prohibitions applicable to the type(s) of Medical Marijuana

Business(es) being operated, under state and local laws, ordinances, rules, and regulations, and may be disciplined for violation of the same.

F. Inventory Tracking System Access. A Medical Marijuana Business may grant access to its Inventory Tracking System account to the Controlling Beneficial Owners who are required to hold Owner Licenses, as well as the licensed agents and employees of a Medical Marijuana Business Operator having duties related to Inventory Tracking System activities of the Medical Marijuana Business(s) being operated.

1. The Controlling Beneficial Owners, agents, and employees of a Medical Marijuana Business Operator granted access to a Medical Marijuana Business's Inventory Tracking System account, shall comply with all Inventory Tracking System rules.

2. At least one Controlling Beneficial Owner of a Medical Marijuana Business being operated by a Medical Marijuana Business Operator must be an Inventory Tracking System Trained Administrator for the Medical Marijuana Business's Inventory Tracking System account. That Inventory Tracking System Trained Administrator shall control access to its Inventory Tracking System account, and shall promptly terminate the access of the Medical Marijuana Business Operator's Controlling Beneficial Owners, agents, and employees:

   a. When its contract with the Medical Marijuana Business Operator expires by its terms;

   b. When its contract with the Medical Marijuana Business Operator is terminated by any party; or

   c. When it is notified that the license of the Medical Marijuana Business Operator, or a specific Controlling Beneficial Owner, agent or employee of the Medical Marijuana Business Operator, has expired, or has been suspended or revoked.

G. Limitations on Use of Documents and Information Obtained from Medical Marijuana Businesses. A Medical Marijuana Business Operator, and its agents and employees, shall maintain the confidentiality of documents and information obtained from the other Medical Marijuana Business(es) it operates, and shall not use or disseminate documents or information obtained from a Medical Marijuana Business it operates for any purpose not authorized by the Marijuana Code and the rules promulgated pursuant thereto, and shall not engage in data mining or other use of the information obtained from a Medical Marijuana Business to promote the interests of the Medical Marijuana Business Operator or its Controlling Beneficial Owners, Passive Beneficial Owners, Indirect Financial Interest Holders, agents or employees, or any Person other than the Medical Marijuana Business it operates.

H. Form and Structure of Allowable Agreement(s) Between Operators and Owners. Any agreement between a Medical Marijuana Business and a Medical Marijuana Business Operator:

1. Must acknowledge that the Medical Marijuana Business Operator, and its Controlling Beneficial Owners, agents and employees who are engaged, directly or indirectly, in operating the Medical Marijuana Business, are agents of the Medical Marijuana Business being operated, and must not disclaim an agency relationship;

2. May provide for the Medical Marijuana Business Operator to receive direct remuneration from the Medical Marijuana Business, including a portion of the profits of the Medical Marijuana Business being operated, subject to the following limitations:

a. The portion of the profits to be paid to the Medical Marijuana Business Operator shall be commercially reasonable, and in any event shall not exceed the portion of the net profits to be retained by the Medical Marijuana Business being operated;

b. The Medical Marijuana Business Operator shall not be granted, and may not accept:

i. A security interest in the Medical Marijuana Business being operated, or in any assets of the Medical Marijuana Business;

ii. An ownership or membership interest, shares, or shares of stock, or any right to obtain any direct or indirect beneficial ownership interest in the Medical Marijuana Business being operated, or a future or contingent right to the same, including but not limited to options or warrants;

c. The Medical Marijuana Business Operator shall not guarantee the Medical Marijuana Business's debts or production levels.

3. Shall permit the Medical Marijuana Business being operated to terminate the contract with the Medical Marijuana Business Operator at any time, with or without cause.

I. A Medical Marijuana Business Operator may engage in dual operation of a Medical Marijuana Business and a Retail Marijuana Business at a single location, to the extent the Medical Marijuana Business being operated is permitted to do so pursuant to subsection 44-10-501(2)(a), C.R.S., and the Medical Marijuana Business Operator shall comply with the rules promulgated pursuant to the Marijuana Code, including the requirement of obtaining a valid license as a Retail Marijuana Business Operator.

J. Any Medical Marijuana Business Operators and the Medical Marijuana Business Operator's Owner Licensee(s) that are appointed by a court to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Medical Marijuana Business must comply with Rule 2-275(F).

Basis and Purpose – 5-615

The statutory authority for this rule includes but is not limited to sections, 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to establish license requirements for the Medical Marijuana Business Operator's Controlling Beneficial Owners, agents and employees, including those directly or indirectly engaged in the operation of other Medical Marijuana Business(es). This Rule 5-615 was previously Rule M 1703, 1 CCR 212-1.

5-615 – Medical Marijuana Business Operators: Employee Licenses for Personnel

A. Required Licenses.

1. Owner Licenses. All natural persons who are Controlling Beneficial Owners in a Medical Marijuana Business Operator must have a valid Owner License, associated with the Medical Marijuana Business Operator license. Such an Owner License shall satisfy all licensing requirements for work related to the business of the Medical Marijuana Business Operator and for work performed on behalf of, or at the Licensed Premises of, the Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator.

2. Employee Licenses. All natural persons who are agents or employees of a Medical Marijuana Business Operator that are actively engaged, directly or indirectly, in the management, supervision, or operation of one or more other Medical Marijuana Businesses, including but not limited to all agents or employees who will come into contact with Medical Marijuana, who will have access to Limited Access Areas, or who will have access to the Inventory Tracking System account of the Medical Marijuana Business(es) being operated, must hold a valid Employee License. The Employee License shall satisfy all licensing requirements for work related to the business of the Medical Marijuana Business Operator and for work at the Licensed Premises of, or on behalf of, the Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator.

B. Employee Licenses Not Required. Employee Licenses are not required for Passive Beneficial Owners of a Medical Marijuana Business Operator or for natural persons who will not come into contact with Medical Marijuana, will not have access to Limited Access Area(s) of the Medical Marijuana Business(es) being operated, and will not have access to the Inventory Tracking System account of the Medical Marijuana Business(es) being operated.

C. Designation of Management Personnel of a Medical Marijuana Business Operated by a Medical Marijuana Business Operator. If a Medical Marijuana Business Operator is contracted to manage the overall operations of a Medical Marijuana Business's Licensed Premises, the Medical Marijuana Business shall designate separate and distinct management personnel on the Licensed Premises who is an officer, agent, or employee of the Medical Marijuana Business Operator, which shall be a natural person with a valid Owner License or Employee License, as set forth in paragraph A of this Rule, and the Medical Marijuana Business shall comply with the reporting provisions of subsection 44-10-313, C.R.S.

Basis and Purpose – 5-620

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to establish records retention standards for a Medical Marijuana Business Operators. This Rule 5-620 was previously Rule M 1704, 1 CCR 212-1.

5-620 – Medical Marijuana Business Operators: Business Records Required

A. General Requirement. A Medical Marijuana Business Operator must maintain all required business records as set forth in Rule 3-905 - Business Records Required, except that:

1. A Medical Marijuana Business Operator is not required to maintain secure facility information, diagrams of its designated place of business, or a visitor log for its separate place of business, because a Medical Marijuana Business Operator will not come into contact with Medical Marijuana at its separate place of business; and

2. A Medical Marijuana Business Operator is not required to maintain records related to inventory tracking, or transport, because a Medical Marijuana Business Operator is prohibited from engaging in activities on its own behalf that would require inventory tracking or transport. All records relating to inventory tracking activities and records related to transport pertaining to the Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator shall be maintained at the Licensed Premises of such Medical Marijuana Business(es).

B. All records required to be maintained shall be maintained at the Licensed Premises of the Medical Marijuana Business(es) it operates.

5-700 Series – Marijuana Research and Development Facilities

Basis and Purpose – 5-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to establish and clarify the distinct license privilege granted to Marijuana Research and Development Facilities by the State Licensing Authority. This Rule 5-705 was previously Rule M 1901, 1 CCR 212-1.

5-705 – Marijuana Research and Development Facilities: License Privileges

A. License Privileges.

1. Licensed Premises. A Marijuana Research and Development Facility may share a Licensed Premises with a commonly owned Medical Marijuana Testing Facility. Additionally, a Marijuana Research and Development Facility with an R&D Co-Location Permit may share a Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility.

    a. If a Marijuana Research and Development Facility shares its Licensed Premises with a commonly owned Medical Marijuana Testing Facility, the Licensees shall physically segregate all Medical Marijuana used for research purposes in order to prevent contamination or any other effect on Medical Marijuana submitted to the Medical Marijuana Testing Facility for testing.

    b. If a Marijuana Research and Development Facility shares its Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility, the Marijuana Research and Development Facility must first obtain an R&D Co Location Permit for that Licensed Premises and must comply with all terms and conditions of the R&D Co-Location Permit.

2. Authorized Sources of Medical Marijuana. A Medical Marijuana Cultivation Facility and Medical Marijuana Products Manufacturer may Transfer Medical Marijuana to a Marijuana Research and Development Facility.

    a. A Marijuana Research and Development Facility may also accept and possess Regulated Marijuana obtained in accordance with an approved Research Project.

    b. Upon receipt of Regulated Marijuana pursuant to Rule 5-705(A)(2)(a), a Marijuana Research and Development Facility shall immediately enter the Regulated Marijuana as Medical Marijuana in its Inventory Tracking System and shall follow all requirements of the Marijuana Code and these Rules including but not limited to inventory tracking and packaging and labeling. As part of and in compliance with the conditions of an approved Research Project, a Marijuana Research and Development Facility may Transfer the Medical Marijuana to another Marijuana Research and Development Facility or to a Medical or Retail Marijuana Testing Facility. In no event shall any marijuana obtained or Transferred pursuant to this Rule be consumed by humans or utilized in human subject research.

3. Cultivation of Marijuana Authorized. A Marijuana Research and Development Facility may grow, cultivate, possess, and Transfer Medical Marijuana for use in research only.

4. Production of Marijuana Concentrate. A Marijuana Research and Development Facility and a Medical Marijuana Cultivation Facility are subject to the same restrictions concerning Medical Marijuana Concentrate production. Therefore, a Marijuana Research and Development Facility may produce Medical Marijuana Concentrate only as allowed by, and in conformance with, Rule 5-220(A)-(B).

5. Production of Marijuana Products. A Marijuana Research and Development Facility and a Medical Marijuana Products Manufacturer are subject to the same restrictions concerning Medical Marijuana Product manufacturing. Therefore, a Marijuana Research and Development Facility may manufacture Medical Marijuana Product only as allowed by, and in conformance with, Rule 5-305.

6. Authorized Marijuana Transport. A Marijuana Research and Development Facility is authorized to utilize a licensed Medical Marijuana Transporter for transportation of Medical Marijuana to other Marijuana Research and Development Facility Licensees so long as the place where transportation orders are taken and delivered is a Marijuana Research and Development Facility. Nothing in this Rule prevents a Marijuana Research and Development Facility from transporting its own Medical Marijuana to other Marijuana Research and Development Facilities.

B. R&D Co-Location Permit. A Marijuana Research and Development Facility may obtain an R&D Co-Location Permit to operate at the same Licensed Premises as a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility under the following circumstances:

1. The Marijuana Research and Development Facility must apply on current Division forms and pay any applicable fees.

2. A Marijuana Research and Development Facility may only apply for and hold an R&D Co-Location Permit if the Local Licensing Authority or Local Jurisdiction allow for Marijuana Research and Development Facility to operate at the same location as the specified Regulated Marijuana Business. Any R&D Co-Location Permit issued by the Division is conditioned upon the Marijuana Research and Development Facility's receipt of all required Local Licensing Authority or Local Jurisdiction approvals or acknowledgements.

3. The Marijuana Research and Development Facility and the specified Regulated Marijuana Business shall be commonly owned.

4. Prior to operating in the same Licensed Premises pursuant to an R&D Co-Location Permit, the Marijuana Research and Development Facility shall submit a co-location plan and standard operating procedures to the Division. The co-location plan and standard operating procedures shall demonstrate protocols to prevent cross-contamination and protect public health and safety, including but not limited to:

   a. Standards and controls for maintaining physical separation between the Marijuana Research and Development Facility's research activities and the cultivating or manufacturing activities of the co-located Regulated Marijuana Business; and

   b. Standards and controls for maintaining physical separation between the Marijuana Research and Development Facility's Medical Marijuana and the co-located Regulated Marijuana Business's Regulated Marijuana.

5. The Division may request the assistance of the Colorado Department of Public Health and Environment or any other state or local agency in reviewing the co-location plan and

standard operating procedures, and in determining whether the co-location plan and standard operating procedures demonstrate protocols to prevent cross-contamination and protect public health and safety.

6. Modifying the co-location plan and standard operating procedures shall be considered a significant change to the Licensed Premises. *See* Rule 2-260 – Changing, Altering, or Modifying the Licensed Premises.

7. Record keeping, inventory tracking, packaging and labeling for the Marijuana Research and Development Facility and co-located Regulated Marijuana Business must enable the Division, Local Licensing Authority, or Local Jurisdiction to clearly distinguish the inventory, transactions, and activities of the Marijuana Research and Development Facility from the inventory, transactions, and activities of the co-located Regulated Marijuana Business.

Basis and Purpose - 5-710

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-313(7), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to clarify those acts that are prohibited, or limited in some fashion, by a Marijuana Research and Development Facility. This Rule 5-710 was previously Rule M 1902, 1 CCR 212-1.

5-710 – Marijuana Research and Development Facility: General Limitations or Prohibited Acts

A. Restrictions Applicable to Any Marijuana Research and Development Facility.

1. Packaging and Labeling Standards Required. A Marijuana Research and Development Facility is prohibited from Transferring to a Licensee or any other Person Medical Marijuana that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

a. Unless the Medical Marijuana was subject to contaminant testing required by the Marijuana Code and these rules, a Marijuana Research and Development Facility shall disclose to any individual receiving Medical Marijuana as part of an approved Research Project that the Medical Marijuana has not been subject to mandatory contaminant testing.

2. Transfers to Individuals. A Marijuana Research and Development Facility is prohibited from Transferring Medical Marijuana to any individual, unless as part of an approved Research Project.

3. Consumption Prohibited. A Marijuana Research and Development Facility shall not permit the consumption of Medical Marijuana on its Licensed Premises, unless the consumption is part of an approved Research Project and the Marijuana Research and Development Facility does not share a Licensed Premises with a Regulated Marijuana Business.

4. Worker Health and Safety. A Marijuana Research and Development Facility shall comply with all applicable federal, state, and local laws regarding worker health and safety.

5. Performance Incentives. A Marijuana Research and Development Facility may not use performance-based incentives to compensate its employees, agents, or contractors who will conduct research, development, or testing.

6. Licensure and Research Projects. A Marijuana Research and Development Facility shall not engage in any research activities until the State Licensing Authority or its delegate approves both (1) its business license application, pursuant to Rule 2-215, and (2) one or more Research Project(s), pursuant to Rule 5-715.

    a. A Marijuana Research and Development Facility may submit its business license application prior to or in conjunction with its Research Project proposal. Except that the Marijuana Research and Development Facility may not engage in any research activities except in conjunction with an approved Research Project.

    b. If a Marijuana Research and Development Facility's license expires or is suspended or revoked, the Licensee shall immediately cease all activities associated with the privileges of licensure, including but not limited to research.

B. Restrictions Applicable to Marijuana Research and Development Facilities.

1. Transfer Restriction. A Marijuana Research and Development Facility may only Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product to:

    a. A Medical Marijuana Testing Facility for testing;

    b. A natural person as part of and in compliance with the conditions of an approved Research Project;

    c. In the case of Medical Marijuana cultivated at the Licensed Premises of the Marijuana Research and Development Facility, to another Marijuana Research and Development Facility; or

    d. In the case of an Immature Plant that has not been exposed to a chemical prohibited by Rule 3-325, to another Medical Marijuana Business.

Basis and Purpose – 5-715

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to ensure that any research or development conducted by a Marijuana Research and Development Facility shall be in furtherance of a Research Project approved by the Division. The purpose of this rule is also to establish the applicable requirements necessary for Marijuana Research and Development Facilities to seek and receive Division approval for all proposed Research Projects. This Rule 5-715 was previously Rule M 1904, 1 CCR 212-1.

5-715 – Marijuana Research and Development Facility: Project Approval

A. Project Approval. Prior to engaging in any research activities, a Marijuana Research and Development Facility shall obtain approval from the Division for a Research Project by submitting a Research Project proposal. Any research or development conducted by a Marijuana Research and Development Facility shall be in furtherance of an approved Research Project.

1. General. A Marijuana Research and Development Facility Applicant or Licensee shall seek approval of the Division by submitting its Research Project proposal.

    a. A Research Project proposal shall include a description of the Research Project's defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date.

i. The description of the proposed Research Project proposal shall include the quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana Product reasonably required to conduct the proposed Research Project, the total quantity of which is subject to approval by the Division as part an approved Research Project.

b. A Marijuana Research and Development Facility may enter into contracts or agreements with a public higher education research institution or another Marijuana Research and Development Facility to conduct the proposed Research Project. A Marijuana Research and Development Facility Applicant or Licensee shall disclose all contracts or agreements with a public higher education research institution or a Marijuana Research and Development Facility.

i. If a Marijuana Research and Development Facility enters into a contract or agreement to conduct a Research Project with a public higher education research institution, all research activities involving possession of Medical Marijuana shall occur at the Marijuana Research and Development Facility's Licensed Premises. Employees, agents, or contractors of the public higher education research institution may not work at or conduct research activities at the Marijuana Research and Development Facility's Licensed Premises unless they hold an Employee License issued by the State Licensing Authority.

c. A Marijuana Research and Development Facility may submit additional Research Project proposals at any time during which its license is current and valid.

2. Private Research. Unless the proposed Research Project is being conducted in whole or in part by a Public Institution or with Public Money, the Marijuana Research and Development Facility Applicant or Licensee shall obtain a review of its proposed Research Project by one or more independent reviewers. The Division, in its discretion, may require a Marijuana Research and Development Facility Applicant or Licensee to nominate multiple independent reviewers. The Division must approve each nominated independent reviewer.

a. Fees and Costs. The Applicant or Licensee shall be solely responsible for any fees or costs associated with all aspects and all stages of the independent reviewer's services.

b. Qualifications of an Independent Reviewer. Each independent reviewer nominated by a Marijuana Research and Development Facility Applicant or Licensee must be a qualified researcher within the field of study that relates to proposed Research Project.

i. The Division may consult with the Colorado Department of Public Health and Environment and/or the Colorado Department of Agriculture in reviewing whether a nominated independent reviewer is qualified to review the Marijuana Research and Development Facility's Research Project.

ii. The Division, in its discretion, may require a nominated independent reviewer or the Marijuana Research and Development Facility to provide additional information or analysis that the Division deems pertinent to its review of whether to approve the Licensee's nomination of the independent reviewer.

c. Conflicts of Interest. A Marijuana Research and Development Facility Applicant or Licensee must disclose all pre-existing financial, employment, business, or personal relationships between the Marijuana Research and Development Facility or any of its Owner Licensees and each independent reviewer. In determining whether to approve an independent reviewer, the Division may consider whether a pre-existing relationship exists that could affect the independent reviewer's independence or appearance of independence.

d. Independent Reviewer Approval Required. If a Marijuana Research and Development Facility Applicant or Licensee nominates an independent reviewer who is not approved by the Division, the State Licensing Authority may deny a Research Project on that ground unless the Marijuana Research and Development Facility Applicant or Licensee nominates another independent reviewer who is approved by the Division.

e. Independent Reviewer Report. After an independent reviewer has been approved by the Division, the Marijuana Research and Development Facility Applicant or Licensee shall submit a report by the independent reviewer to the Division as part of its Research Project proposal. The independent reviewer's report shall address the following criteria as described in the Research Project's description:

i. The identity of the independent reviewer and his/her employer;

ii. Any compensation paid by the Marijuana Research and Development Facility Applicant or Licensee for the review and report;

iii. A description of the review conducted by the independent reviewer, including but not limited to an identification of all documents that were reviewed;

iv. An analysis by the independent reviewer as to whether the proposed Research Project constitutes a type of approved research pursuant to Rule 5-720(A) and the reason(s) supporting the reviewer's analysis;

v. An assessment of the total quantity of Medical Marijuana reasonably required to conduct the proposed Research Project;

vi. An assessment of whether the proposed Research Project presents any type of danger to the public health and/or safety, and/or whether the proposed Research Project presents any health or safety risks;

vii. An assessment of whether the proposed Research Project has a strong scientific basis, appropriate study design, and technically sound scientific methodology;

viii. An assessment of whether the Marijuana Research and Development Facility Applicant or Licensee is qualified to perform the proposed Research Project, including whether Marijuana Research and Development Facility Applicant or Licensee's employees are qualified to perform the proposed Research Project;

ix. An assessment of whether the Marijuana Research and Development Facility Applicant or Licensee has the appropriate resources and protocols to conduct the proposed Research Project;

x. An assessment of whether the Marijuana Research and Development Facility Applicant or Licensee has the appropriate personnel, expertise, facilities, infrastructure, funding, and other human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule 5-720(C) and (D);

xi. The following certification by the independent reviewer: "I hereby certify and affirm that I do not have any financial, employment, business, or personal relationship with [INSERT MARIJUANA RESEARCH AND DEVELOPMENT FACILITY NAME] ("Licensee") that would influence or affect my review of the Licensee's proposed Research Project activity. Other than the fees disclosed herein, neither the Licensee nor any other person has given me anything of value or made any promises to me that would influence or affect my review of the Licensee's proposed research activity. I further certify and affirm that this report was drafted by me, and that the information, analysis, and conclusions herein represent solely my work and conclusions."; and

xii. The signature of the independent reviewer.

f. The Marijuana Research and Development Facility shall maintain copies of all documents and correspondence sent to or from the independent reviewer. *See* Rule 3-905 – Business Records Required.

g. The Division, in its discretion, may require the independent reviewer and/or the Marijuana Research and Development Facility Applicant or Licensee to provide additional information or analysis that the Division deems pertinent to its review of the Applicant or Licensee's Research Project proposal.

h. The State Licensing Authority may decline to approve a Research Project proposal if an independent reviewer or the Division through further investigation concludes that:

i. The description of the Research Project does not meet the requirements of section 44-10-507, C.R.S., and these rules;

ii. The proposed Research Project presents a danger to the public health and/or safety, and/or the research to be conducted pursuant to the Research Project presents any health or safety risks;

iii. The proposed Research Project lacks scientific value or validity;

iv. The Marijuana Research and Development Facility Applicant or Licensee is not qualified to perform the proposed research;

v. The Marijuana Research and Development Facility Applicant or Licensee does not have the appropriate resources and/or protocols to conduct the proposed research;

vi. The Marijuana Research and Development Facility Applicant or Licensee lacks the appropriate personnel, expertise, facilities, infrastructure, funding, or human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule 5-720(C) and (D);

vii. The independent reviewer(s) cannot meet the certification requirements in this Rule; or

viii The Marijuana Research and Development Facility Applicant or Licensee or the proposed Research Project is otherwise not in compliance with the Marijuana Code or these rules.

3. Projects with Public Institutions or Money. If a Marijuana Research and Development Facility Applicant or Licensee's proposed Research Project will be conducted in whole or in part with a Public Institution or Public Money, the Division shall refer the Licensee's Research Project proposal to the Scientific Advisory Council established by section 25-1.5-106.5(3), C.R.S., for review.

a. The Marijuana Research and Development Facility Applicant or Licensee shall supply the Scientific Advisory Council with any information and/or documents requested by the Scientific Advisory Council within the deadline imposed by the Scientific Advisory Council. A Marijuana Research and Development Facility Applicant or Licensee's failure to supply information and/or documents requested by the Scientific Advisory Council within the deadline set by the Scientific Advisory Council shall be grounds for denial of the Research Project proposal.

b. The Scientific Advisory Council shall review the proposed Research Project to ensure that the proposed Research Project meets the requirements of Rule 5-720(A).

c. The Scientific Advisory Council shall also assess the adequacy of the following:

i. The proposed Research Project's quality, study design, value, or impact;

ii. Whether the Marijuana Research and Development Facility Applicant or Licensee has the appropriate personnel, expertise, facilities, infrastructure, funding, and human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule 5-720(C) and (D); and

iii. Whether the amount of Medical Marijuana the Marijuana Research and Development Facility Applicant or Licensee proposes to grow or possess is consistent with the proposed Research Project's scope and goals.

d. The Scientific Advisory Council shall communicate the results of its review of the proposed Research Project to the Division. If the Scientific Advisory Council determines that the requirements of either Paragraph (b) or (c) of this Rule are not satisfied, then the proposed Research Project shall be denied.

e. The Marijuana Research and Development Facility shall maintain copies of all documents and correspondence sent to or from the Scientific Advisory Council. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 5-720

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule to establish the limited research purposes authorized for Marijuana Research and Development Facilities. The purpose of this rule is also to establish additional requirements for Research Projects involving human subjects and animal subjects, as well as restrictions on the use of Pesticides.

The rule also establishes reporting requirements and explains when the State Licensing Authority may require a Marijuana Research and Development Facility to undergo an audit of its research activities. This Rule 5-720 was previously Rule M 1905, 1 CCR 212-1.

5-720 – Marijuana Research and Development Facility: Authorized Research Activities

A. Authorized Research. A Marijuana Research and Development Facility is authorized to engage in the following research at its Licensed Premises:

1. Chemical Potency and Composition Levels.

2. Clinical Investigations of Marijuana-Derived Products.

3. Efficacy and Safety of Administering Marijuana as Part of Medical Treatment.

4. Genomic Research.

5. Horticultural Research.

6. Agricultural Research.

7. Marijuana-Affiliated Products or Systems. A marijuana-affiliated product or system includes products or systems such as marijuana delivery systems and cultivation or processing equipment.

B. Pesticide Research. A Marijuana Research and Development Facility shall not engage in any research activities involving Pesticides unless the Marijuana Research and Development Facility has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 *et seq.,* C.R.S., and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.

1. A Marijuana Research and Development Facility engaged in research activities involving Pesticide shall at all times comply with the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S., Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S., and all rules promulgated pursuant thereto.

C. Research Involving Human Subjects. A Marijuana Research and Development Facility shall not conduct any research involving human subjects unless all aspects of its proposed Research Project have been reviewed and approved by an Institutional Review Board that is registered and in good standing with Office for Human Research Protections, U.S. Department of Health and Human Services.

1. A Marijuana Research and Development Facility shall include proof of approval and ongoing oversight and review by an Institutional Review Board as part of its Research Project proposal. A Research Project may be approved conditioned upon subsequent Institutional Review Board approval. A Licensee shall not engage in any Research Project involving human subjects until it receives approval by the Institutional Review Board and its Research Project is approved. A Marijuana Research and Development Facility conducting research involving human subjects shall also comply with any ongoing monitoring required by the Institutional Review Board.

2. A Marijuana Research and Development Facility conducting research involving human subjects shall at all times comply with the U.S. Department of Health and Human Services' requirements for protection of human research subjects, including additional safeguards necessary for vulnerable populations, such as children, prisoners, pregnant

women, mentally disabled persons, or economically or educationally disadvantaged persons, 45 C.F.R. part 46, and all other relevant federal and/or state laws and regulations regarding research on human subjects, as well as all prevailing ethical standards and requirements for research involving human subjects.

3. A Marijuana Research and Development Facility conducting research involving human subjects shall obtain informed consent from any individual participating in such research prior to the individual's participation in the research. A Marijuana Research and Development Facility shall comply with U.S. Food and Drug Administration requirements for informed consent and additional safeguards for children in clinical investigations, 21 C.F.R. part 50, as part of approval and ongoing oversight and review by an Institutional Review Board.

D. Research Involving Animal Subjects. A Marijuana Research and Development Facility shall not conduct any research involving animal subjects as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g) unless the Marijuana Research and Development Facility is registered with the U.S. Department of Agricultural pursuant to the Animal Welfare Act, 7 U.S.C. §§ 2131 *et seq.*

1. A Marijuana Research and Development Facility shall include proof of its current registration with the U.S. Department of Agriculture as part of its Research Project proposal. Failure to be registered with the U.S. Department of Agriculture shall be grounds for denial of Research Project proposal involving animal subjects.

2. A Marijuana Research and Development Facility shall at all times treat animal subjects as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g) involved in research humanely and consistent with all relevant federal and/or state laws and regulations, as well as all prevailing ethical standards and requirements for research on such animals.

E. Research Involving Testing of Marijuana. A Marijuana Research and Development Facility may only engage in research regarding the testing of Medical Marijuana if the following criteria are met:

1. Testing Qualifications. A Marijuana Research and Development Facility must meet at least one of the following standards:

a. The Marijuana Research and Development Facility also holds a Medical Marijuana Testing Facility license and has been certified pursuant to Rule 5-415;

b. The Marijuana Research and Development Facility is accredited to the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO 17025 standard; or

c. The Marijuana Research and Development Facility is part of an institution of higher education whose protocols have been approved by the Colorado Department of Public Health and Environment.

2. A Marijuana Research and Development Facility proposing to engage in research regarding the testing of Medical Marijuana shall include in its Research Project proposal documentation establishing its testing qualification pursuant to Paragraph (E)(1) of this Rule. *See* Rule 5-715 – Marijuana Research and Development Facilities: Project Approval.

F. Transfers of Marijuana Used in Research. A Marijuana Research and Development Facility shall not Transfer to any Person any Medical Marijuana unless such Transfer is authorized under Rule

5-710. Otherwise, a Marijuana Research and Development Facility shall at the conclusion of its research destroy all remaining Medical Marijuana subject to the Marijuana Research and Development Facility's approved Research Project. Unless otherwise provided, a Research Project will be deemed concluded on its defined end date as provided in the Marijuana Research and Development Facility's Research Project proposal that was submitted to and approved by the Division. The Marijuana Research and Development Facility shall ensure destruction of such remaining Medical Marijuana is destroyed in conformance with Rule 3-230.

G. Periodic Reporting. A Marijuana Research and Development Facility shall submit to the Division a report regarding the status of approved Research Projects every six months following the Division's approval of its Research Project.

1. The periodic reports shall address the Marijuana Research and Development Facility's compliance and progress with its approved Research Project.

2. The periodic reports shall include any protocol changes or reported protocol deviations, as well as enrollment numbers and adverse events for studies involving human subjects.

3. If the Marijuana Research and Development Facility is conducting its Research Project in whole or in part with a Public Institution or Public Money, the Division shall submit the Marijuana Research and Development Facility's periodic reports to the Scientific Advisory Council for review.

4. If an adverse event occurs, the Marijuana Research and Development Facility shall immediately notify the Division of the adverse event on the form prepared by the Division.

H. Suspension or Revocation of Project Approval. Research Project approval is subject to revocation or suspension if the Marijuana Research and Development Facility's research has materially diverged from the Marijuana Research and Development Facility's approved Research Project, violates the Marijuana Code or the rules promulgated thereto, or presents a risk to public health and safety. *See* 8-200 Series Rules – Discipline.

I. Reporting of Research Results. A Marijuana Research and Development Facility shall supply the Division with copies of all final reports, findings, or documentation regarding the outcomes of approved Research Projects.

J. Independent Research Audit. The State Licensing Authority in its discretion may at any time require that a Marijuana Research and Development Facility undergo an audit of its research activities.

1. Circumstances Justifying Independent Research Audit. The following is a non-exhaustive list of examples that may justify an independent research audit:

a. The Division has reasonable grounds to believe that the Marijuana Research and Development Facility is in violation of one or more of the requirements set forth in these rules or other applicable statutes or regulations;

b. The Division has reasonable grounds to believe that the Marijuana Research and Development Facility's research activities present a danger to the public health and/or safety; or

c. The Division has reasonable grounds to believe that the Marijuana Research and Development Facility has been or is engaged in research activities that have not received prior Division approval.

2. Selection of An Independent Consultant. The Division and the Marijuana Research and Development Facility may attempt to mutually agree upon the selection of an independent consultant to perform a research audit. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

3. Costs. The Marijuana Research and Development Facility subject to an independent research audit will be responsible for all costs associated with the independent research audit, including but not limited to the auditor's fees.

4. Compliance Required. A Marijuana Research and Development Facility must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent research audit in conformance with this Rule.

K. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-725

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to permit laboratory testing of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Products used by Marijuana Research and Development Facilities. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Marijuana Research and Development Facilities. This Rule 5-725 was previously Rule M 1907, 1 CCR 212-1.

5-725 – Marijuana Research and Development Facility: Testing

A. Samples on Demand. Upon request of the Division, a Marijuana Research and Development Facility shall submit a sufficient quantity of Medical Marijuana to a Medical Marijuana Testing Facility for testing. The Division will notify the Marijuana Research and Development Facility of the results of the analysis. *See* Rule 3-805 – Medical Marijuana Business: Inventory Tracking System; Rule 3-905 – Business Records Required.

B. Samples Provided for Testing. A Marijuana Research and Development Facility may provide Samples of its Medical Marijuana to a Medical Marijuana Testing Facility for testing purposes. The Marijuana Research and Development Facility shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 5-730

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to establish a Marijuana Research and Development Facility may only possess an amount of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product Medical Marijuana approved in conjunction with the Licensee's approved Research Projects. The purpose of this rule is also to establish additional Inventory Tracking and separation requirements for Medical Marijuana cultivated for Transfer by a Marijuana Research and Development Cultivation. This Rule 5-730 was previously Rule M 1908, 1 CCR 212-1.

5-730 – Marijuana Research and Development Facility: Production Management and Possession Limits

A. Marijuana Authorized for Transfer. A Marijuana Research and Development Facility that is authorized to cultivate Medical Marijuana for Transfer to other Marijuana Research and

Development Facilities may not have more than 500 Medical Marijuana plants and 20 pounds of Medical Marijuana in its Limited Access Area at any given time, unless expressly approved by the Division as part of an approved Research Project.

1. A Marijuana Research and Development Facility shall indicate in the Inventory Tracking System whether Medical Marijuana is going to be used by the Licensee in an approved Research Project or Transferred to another Marijuana Research and Development Facility. A Marijuana Research and Development Facility may cultivate Medical Marijuana prior to approval of a Research Project, except the Marijuana Research and Development Facility may only designate such Medical Marijuana as Medical Marijuana to be Transferred to other Marijuana Research and Development Facilities unless the Marijuana Research and Development Facility has an approved Research Project. Upon approval of a Research Project, a Marijuana Research and Development Facility shall indicate in the Inventory Tracking System whether any such Medical Marijuana authorized for Transfer will be subject to the Marijuana Research and Development Facility's research pursuant to the approved Research Project.

B. Marijuana for Research. A Marijuana Research and Development Facility shall only possess for research the amount of Medical Marijuana approved by the Division pursuant to each of the Licensee's approved Research Projects.

C. Separation of Marijuana Used in Research. A Marijuana Research and Development Facility shall physically separate all Medical Marijuana used in the Licensee's own approved Research Project(s) from Medical Marijuana to be Transferred to other Marijuana Research and Development Facilities for approved Research Projects.

Part 6 – Retail Marijuana Business License Types

6-100 Series – Retail Marijuana Stores

Basis and Purpose – 6-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(dd), 44-10-313(14), 44-10-401(2)(b)(I), 44-10-601, and 44-10-605, C.R.S. The purpose of this rule is to the license privileges of a Retail Marijuana Store licensee. This Rule 6-105 was previously Rule R 401.

Please Note: *The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.*

6-105 – Retail Marijuana Store: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Business– Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share, and operate at, the same Licensed Premises with a commonly-owned Medical Marijuana Store. However, a separate License is required for each specific business or business entity, regardless of geographical location.

B. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

C. Samples Provided for Testing. A Retail Marijuana Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store

shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

D. Authorized On-Premises Storage. A Retail Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

E. Authorized Marijuana Transport. A Retail Marijuana Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Store from transporting its own Retail Marijuana.

F. Performance-Based Incentives. A Retail Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

G. Authorized Transfers of ~~Industrial~~ Hemp Products. This rule is effective July 1, 2020. A Retail Marijuana Store may Transfer ~~Industrial~~ Hemp Product to a consumer only after it has confirmed:

1. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

2. That the Person Transferring the ~~Industrial~~ Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

H. Retail Marijuana Store Delivery Permit.

1. Prior to January 2, 2021, all Retail Marijuana Stores are prohibited from delivering Regulated Marijuana to consumers.

2. After January 2, 2021, a Retail Marijuana Store with a valid delivery permit may accept delivery orders deliver Retail Marijuana to consumers pursuant to Rule 3-615.

3. A Retail Marijuana Store that does not possess a valid delivery permit cannot deliver Retail Marijuana.

I. Automated Dispensing Machines: A Retail Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

J. Walk-up Window or Drive-up Window. A Retail Marijuana Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this Rrule.

1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, a Retail Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.

b. The Retail Marijuana Store may accept telephone or internet orders or may accept orders from the customer at the walk-up window or drive-up window. ~~Retail Marijuana Stores may not accept payment for Retail Marijuana over the internet.~~

c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Retail Marijuana Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods, including online payments are permitted ~~for payments~~ for Retail Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Retail Marijuana Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. A Retail Marijuana Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

K. Sales over the Internet. A Retail Marijuana Store may accept orders and payment for Retail Marijuana over the internet.

1. Online Order Requirements.

a. Online orders must include the customer's name and date of birth.

b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:

i. A digital copy of the pregnancy warning required in Rule 6-115; and

ii. If accepting an order for Retail Marijuana Concentrate, the Retail Marijuana Store must also provide the educational resources required in Rule 6-110(C.5).

2. Transfer of Retail Marijuana to the Customer.

a. A Customer must be physically present on the Licensed Premises to take possession of Retail Marijuana.

b. The Retail Marijuana Store must verify the customer's physical identification matches the name and date of birth the customer provided at the time of the order, and verify that the customer is twenty-one years of age or older, in accordance with these Rules.

Basis and Purpose – 6-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-401(2)(b)(I), 44-10-701(1)(a), 44-10-701(3)(d) and (f), and 44-10-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

Regarding quantity limitations on sales, equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower have been included in this rule pursuant to the mandate of House Bill 14-1361. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Retail Marijuana Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

This Rule 6-110 was previously Rule R 402, 1 CCR 212-2.

Please Note: *The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.*

6-110 – Retail Marijuana Sales: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.

B. Age Verification. Licensees must verify on two separate occasions that a Person is 21 years of age or older. First, prior to permitting a Person to enter the Restricted Access Area, a Licensee must verify that the Person has a valid government-issued photo identification showing that the Person is 21 years of age or older. Second, prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A Retail Marijuana Store may also Transfer up to six (6) seeds in addition to the one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:

a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, a Retail Marijuana Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.

E. ~~Sales over the Internet. Only a Retail Marijuana Store holding a valid delivery permit taking orders for delivery may make sales over the internet. Only a Retail Marijuana Store holding a valid delivery permit and/or a Retail Marijuana Transporter holding a valid delivery permit may deliver Retail Marijuana to a private residence. All other Retail Marijuana Store and Retail Marijuana Transporter Licensees are prohibited from selling Retail Marijuana over the internet.~~ Repealed.

F. Delivery Outside Colorado Prohibited. A Retail Marijuana Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.

G. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or a~~n Industrial~~ Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

H. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana to a consumer for any reason.

I. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 3, 4, or 5 of Title 44, C.R.S.

J. Storage and Display Limitations.

1. A Retail Marijuana Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in a Retail Marijuana Store must include the potency of the concentrate on a sign next to the name of the product.

    a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

    b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

K. Transfer of Expired Product Prohibited. A Retail Marijuana Store shall not Transfer any expired Retail Marijuana Product to a consumer.

L. Transfer Restriction.

1. Sampling Units. A Retail Marijuana Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. A Retail Marijuana Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer, or a Marijuana Research and Development Facility.

L.5. Standard Operating Procedures. A Retail Marijuana Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. A Retail Marijuana Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

    a. The distinct shape of a human, animal, or fruit; or

    b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

N. Adverse Health Event Reporting. A Retail Marijuana Store must report Adverse Health Events pursuant to Rule 3-920.

O. Corrective and Preventive Action. This paragraph O shall be effective January 1, 2021. A Retail Marijuana Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(z), and 44-10-202(3)(h), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to establish that a Retail Marijuana Store must control and safeguard access to certain areas where Retail Marijuana and Retail Marijuana Product will be sold to the general public and prevent the diversion of Retail Marijuana and Retail Marijuana Product to people under 21 years of age. This Rule 6-115 was previously Rule R 403, 1 CCR 212-2.

6-115 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Retail Marijuana are sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – No One Under 21 Years of Age Allowed."

B. Consumers in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times when consumers are present to ensure that only persons who are 21 years of age or older are permitted to enter. When allowing a customer access to a Restricted Access Area, Owner Licensees and Employee Licensees shall make reasonable efforts to limit the number of consumers in relation to the number of Owners Licensees and Employee Licensees in the Restricted Access Area at any time.

C. Display of Retail Marijuana. The display of Retail Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the consumer must be supervised by the Owner Licensee or Employee Licensees at all times when consumers are present.

D. Pregnancy Warning. Retail Marijuana Stores must post, at all times and in a prominent place inside the Restricted Access Area, a warning that is at minimum three inches high and six inches wide that reads:

> **WARNING:** Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.

6-200 Series – Retail Marijuana Cultivation Facilities

Please Note: *The following proposed revisions seek to implement SB 23-271 statutory revisions in section 44-10-602.*

Basis and Purpose – 6-205

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-203(2)(r), 44-10-203(3)(c), 44-10-313(14), 44-10-401(2)(b)(II), and 44-10-602, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to a Retail Marijuana Cultivation Facility. This Rule 6-205 was previously Rule R 501, 1 CCR 212-2.

6-205 – Retail Marijuana Cultivation Facility: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Cultivation Facility. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Retail Marijuana Cultivation Facility comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Retail Marijuana Cultivation Facility comply with all applicable rules. *See* 5-700 Series Rules.

B. Cultivation of Retail Marijuana and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate Authorized. A Retail Marijuana Cultivation Facility may propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate.

C. Authorized Transfers. A Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate to another Retail Marijuana Business. A Retail Marijuana Cultivation Facility and an Accelerator Cultivator may also Transfer to a Medical Marijuana Cultivation Facility in compliance with Rules 6-230 and 6-730.

1. A Retail Marijuana Cultivation Facility shall not Transfer Flowering plants. A Retail Marijuana Cultivation Facility may only Transfer Vegetative plants as authorized pursuant to Rule 3-605.

2. A Retail Marijuana Cultivation Facility may Transfer Sampling Units of Retail Marijuana or Retail Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-602(6), C.R.S., and Rule 6-225.

3. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Retail Marijuana Cultivation Facility prior to testing required by these rules only if such Transfer is in accordance with one of the two options below.

   a. The Retail Marijuana Cultivation Facility may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Retail Marijuana Cultivation Facility prior to testing if such Transfer is for the purpose of Decontamination and only after all other steps outlined in the Retail Marijuana Cultivation Facility's standard operating procedures have been completed, including but not limited to drying, curing, and trimming; or

   b. The Retail Marijuana Cultivation Facility may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Retail Marijuana Cultivation Facility prior to testing, drying, curing, trimming, or completion of any other steps in the Retail Marijuana Cultivation Facility's standard operating procedures, subject to the following additional requirements:

      i. The Retail Marijuana Cultivation Facility receiving the Transfer is identified as a centralized processing hub in the Inventory Tracking System and must have identical Controlling Beneficial Owner(s) with the originating Retail Marijuana Cultivation Facility;

      ii. An originating Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana to one receiving Retail Marijuana Cultivation Facility that will be serving as a centralized processing hub;

      iii. The Retail Marijuana or Retail Marijuana Concentrate is weighed prior to leaving the originating Retail Marijuana Cultivation Facility and

immediately upon receipt at the receiving Retail Marijuana Cultivation Facility and in accordance with Rule 3-605;

iv. The Transfer, weighing and entry into the Inventory Tracking System are all completed within 24 hours from initiating the Transfer;

v. The receiving Retail Marijuana Cultivation Facility is responsible for compliance with all testing requirements regardless of any testing performed prior to Transfer. If the receiving Retail Marijuana Cultivation Facility is pursuing a Reduced Testing Allowance, a Reduced Testing Allowance must be achieved separately for marijuana received from each originating Retail Marijuana Cultivation Facility. A Retail Marijuana Cultivation Facility that has achieved a Reduced Testing Allowance must maintain and produce complete testing records that can verify that facility's compliance with testing and Reduced Testing Allowance requirements; and

vi. The standard operating procedures for the originating Retail Marijuana Cultivation Facility and receiving Retail Marijuana Cultivation Facility clearly reflect the steps taken by each facility to Transfer, transport, receive, process, and test Harvest Batches.

4. A Retail Marijuana Cultivation Facility may transfer Retail Marijuana to a Pesticide Manufacturer.

5. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana to a Medical Marijuana Cultivation Facility in accordance with Rules 5-235 and 6-230.

6. A Retail Marijuana Cultivation Facility may Transfer Immature Plants, Retail Marijuana seeds, and Genetic Material to a Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator. Transfers made under this Rule must be in compliance with the 3-800 and the 3-900 Rules Series.

D. Authorized On-Premises Storage. A Retail Marijuana Cultivation Facility is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

E. Samples Provided for Testing. A Retail Marijuana Cultivation Facility may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. A Retail Marijuana Cultivation Facility is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Cultivation Facility from transporting its own Retail Marijuana.

G. Performance-Based Incentives. A Retail Marijuana Cultivation Facility may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Retail Marijuana Cultivation Facility may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-225 – Sampling Unit Protocols.

H. Authorized Sources of Retail Marijuana, Seeds, ~~and~~ Immature Plants, and Genetic Material.

1. A Retail Marijuana Cultivation Facility ~~shall only~~may obtain Retail Marijuana seeds or Immature Plants from its own Retail Marijuana, properly Transferred Medical Marijuana cultivated at a Medical Marijuana Cultivation Facility with at least one identical Controlling Beneficial Owner, or properly Transferred from another Retail Marijuana Business pursuant to the inventory tracking requirements in the 3-800 Series Rules. A Retail Marijuana Cultivation facility may not bring seeds, Immature Plants, or other marijuana that is not Regulated Marijuana onto the Licensed Premises at any time.

2. A Retail Marijuana Cultivation Facility may obtain Regulated Marijuana seeds, Immature Plants, and Genetic Material from:

   a. Another Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility;

   b. A Retail Marijuana Testing Facility;

   c. A marijuana cultivation or testing facility licensed or otherwise approved pursuant to a permit or registration issued by a government agency to operate in another state or territory of the United States;

   d. Pursuant to any federal legal authority allowing interstate commerce of Regulated Marijuana.

3. Transfers made under subparagraph (H)(2) of this Rule must be in compliance with the 3-800 and the 3-900 Rules Series.

I. Centralized Distribution Permit. A Retail Marijuana Cultivation Facility may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Retail Marijuana Stores.

1. For purposes of a Centralized Distribution Permit only, the term “commonly owned” means at least one natural person has a minimum of five percent ownership in both the Retail Marijuana Cultivation Facility possessing a Centralized Distribution Permit and the Retail Marijuana Store to which the Retail Marijuana Concentrate and Retail Marijuana Product will be Transferred.

2. To apply for a Centralized Distribution Permit, a Retail Marijuana Cultivation Facility may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Retail Marijuana Cultivation Facility shall send a copy of its Centralized Distribution Permit addendum to the Local Licensing Authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.

3. A Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Retail Marijuana Concentrate and Retail Marijuana Product from a Retail Marijuana Products Manufacturer for the sole purpose of temporary storage and Transfer to commonly owned Retail Marijuana Stores.

   a. A Retail Marijuana Cultivation Facility may only accept Retail Marijuana Concentrate and Retail Marijuana Product that is packaged and labeled for sale to a consumer pursuant to the 3-1000 Series Rules.

b. A Retail Marijuana Cultivation Facility storing Retail Marijuana Concentrate and Retail Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Retail Marijuana Concentrate or Retail Marijuana Product on the Retail Marijuana Cultivation Facility's Licensed Premises for more than 90 days from the date of receipt.

c. All Transfers of Retail Marijuana Concentrate and Retail Marijuana Product by a Retail Marijuana Cultivation Facility shall be without consideration.

4. All security and surveillance requirements that apply to a Retail Marijuana Cultivation Facility apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

J. Transition Permit. A Retail Marijuana Cultivation Facility may only operate at two geographical locations pursuant to Rule 2-255(D).

Basis and Purpose – 6-210

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-701(2)(a), 44-10-602, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Cultivation Facility. This Rule 6-210 was previously Rule R 502, 1 CCR 212-2.

6-210 – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. Transfer to Consumer Prohibited. A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-602(6), C.R.S., and Rule 6-225.

C. Excise Tax Paid. A Retail Marijuana Cultivation Facility shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S.

D. Corrective and Preventive Action. This paragraph D shall be effective January 1, 2021. A Retail Marijuana Cultivation Facility shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

E. Adverse Health Event Reporting. A Retail Marijuana Cultivation Facility must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(r), 44-10-401(2)(b)(II), and 44-10-602, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Cultivation Facility and standards for the production of Retail Marijuana Concentrate. This Rule 6-215 was previously Rule R 505, 1 CCR 212-2.

6-215 – Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may only produce Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. *See* Rule 3-905- Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of a Retail Marijuana Cultivation Facility unless the Controlling Beneficial Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturer license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If a Retail Marijuana Cultivation Facility produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Controlling Beneficial Owners and Employee Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon a Retail Marijuana Products Manufacturer that produces Retail Marijuana Concentrate, including all general requirements. *See* 3-300 Series Rules – Health and Safety Regulations and Rule 6-315 – Retail Marijuana Products Manufacturer: Retail Marijuana Concentrate Production.

C. Possession of Other Categories of Retail Marijuana Concentrate.

1. It shall be considered a violation of this Rule if a Retail Marijuana Cultivation Facility possesses a Retail Marijuana Concentrate other than a Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises unless: the Controlling Beneficial Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturer license; or the Retail Marijuana Cultivation Facility has been issued a Centralized Distribution Permit and is in possession of the Retail Marijuana Concentrate in compliance with Rule 6-205(I).

2. Notwithstanding subparagraph (C)(1) of this Rule 6-215, a Retail Marijuana Cultivation Facility shall be permitted to possess Solvent-Based Retail Marijuana Concentrate only when the possession is due to the Transfer of Retail Marijuana flower or trim that failed microbial testing to a Retail Marijuana Products Manufacturing Facility for processing into a Solvent-Based Retail Marijuana Concentrate, and the Retail Marijuana Products Manufacturer Transfers the resultant Solvent-Based Retail Marijuana Concentrate back to the originating Retail Marijuana Cultivation Facility.

   a. The Retail Marijuana Cultivation Facility shall comply with all requirements in Rule 4-135(C) when having Solvent-Based Retail Marijuana Concentrate manufactured out of Retail Marijuana flower or trim that failed microbial testing.

   b. The Retail Marijuana Cultivation Facility is responsible for submitting the Solvent-Based Retail Marijuana Concentrate for all required testing for contaminants pursuant to Rule 4-120 – Regulated Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Rules or the Marijuana Code.

   c. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Cultivation Facility that Transfers the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule 6-210(C).

D. Production of Alternative Use Product or Audited Product Prohibited. A Retail Marijuana Cultivation Facility shall not produce an Alternative Use Product or Audited Product.

E. Possession of Alternative Use Product or Audited Product. A Retail Marijuana Cultivation Facility is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Retail Marijuana Cultivation Facility received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from a Retail Marijuana Products Manufacturer that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule 6-325.

Basis and Purpose – 6-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(6), 44-10-401(2)(b)(II), and 44-10-602, C.R.S. The rule establishes a means by which to manage the overall production of Retail Marijuana in the state of Colorado. The intent of this rule is to encourage responsible production to meet demand for retail marijuana consumers, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana.

Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to sell the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a Person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the Person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

The Rule 6-220 was previously Rule R 506, 1 CCR 212-2.

6-220 – Retail Marijuana Cultivation Facility: Production Management

A. One Retail Cultivation License per Licensed Premises.

1. One Retail Marijuana Cultivation License per Licensed Premises. Except as permitted by subparagraph (A)(2) only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises and each Licensed Premises must be located at a distinct address recognized by the Local Jurisdiction.

2. Collapse after January 1, 2019. After January 1, 2019, collapse of more than one Retail Marijuana Cultivation Facility license at a single Licensed Premises through an approved change of location application shall be permitted if all Retail Marijuana Cultivation Facility licenses for which the collapse is sought meet the following requirements:

a. All Retail Marijuana Cultivation Facility licenses sought to be collapsed have been continuously operating for at least 180 days prior to the proposed collapse;

b. All Retail Marijuana Cultivation Facility licenses sought to be collapsed have identical Controlling Beneficial Owners holding identical ownership percentages;

c. There is no pending administrative action regarding any of the Retail Marijuana Cultivation Facility licenses sought to be collapsed;

d. The tier for the surviving Retail Marijuana Cultivation Facility license has not been decreased in the 180 days prior to the change of location application.

e. All Retail Marijuana Cultivation Facility Licensees identify the desired surviving license and agree that all other Retail Marijuana Cultivation Facility licenses will be surrendered at the time of collapse; and

f. Determining Tier for Surviving License.

i. Surviving License Tier Will Not Decrease. The tier for the surviving license will not be decreased as a result of any approved change of location application.

ii. Surrendered License is Tier 1 or Tier 2. For the surviving license to increase one tier or one increment of 3,600 plants if already tier 5 or higher, during the 180 days prior to the change of location application, the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time.

iii. Surrendered License is Tier 3 or Higher. For the surviving license to increase by the maximum authorized plant count of the surrendered license, during the 180 days prior to the change of location application the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time. If during the 180 days prior to the change of location application, the surrendering license did not cultivate at least 50% of the maximum authorized plant count and Transfer at least 85% of the inventory it produced, the surviving license will only increase one tier or one increment of 3,600 plants if already a tier 5 or higher.

iv. Division Determination of Tier. If a collapse results in a maximum authorized plant count in the middle of a tier, the surviving license's maximum authorized plant count will be rounded up to the top of that tier.

B. Production Management.

1. Production Management Tiers.

a. Tier 1: 1 - 1,800 plants

b. Tier 2: 1,801 – 3,600 plants

c. Tier 3: 3,601 – 6,000 plants

d. Tier 4: 6,001 – 10,200 plants

e. Tier 5: 10,201 – 13,800+ plants

i. Tier 5 shall not have a cap on the maximum authorized plant count.

ii. The maximum authorized plant count above 10,200 plants shall increase in one or two increments of 3,600 plants. A Retail Marijuana Cultivation Facility Licensee shall be allowed to increase its maximum authorized plant count one or two increments of 3,600 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule 6-220.

2. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 will be issued as a Tier 1 License.

3. Immature Plants. For purposes of calculating the maximum number of authorized plants, Immature Plants are excluded, but must be fully accounted for in the Inventory Tracking System.

4. Ground for Denial. The Division may deny an application for additional plants pursuant to paragraph E of this Rule if the Licensee exceeded the authorized plant count during the relevant time period for production.

5. Violation Affecting Public Safety. It may be considered a license violation affecting public safety for a Licensee to exceed the authorized plant count pursuant to these Rules.

C. Inventory Management.

1. Inventory Management for Retail Cultivation Facilities that Have One or Two Harvest Seasons a Year. Beginning the 721st day from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 720 days.

2. Inventory Management for Retail Cultivation Facilities That Have More Than Two Harvest Seasons a Year. Beginning the 181st day from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail

Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 180 days.

D. Tier Decrease. For Retail Marijuana Cultivation Facilities that are authorized to cultivate more than 1,800 plants, the Division may review the purchases, Transfers, and cultivated plant count of the Retail Marijuana Cultivation Facility Licensee in connection with the license renewal process or after an investigation. Based on the Division's review, the Division may reduce the Licensee's maximum allowed plant count to a lower production management tier pursuant to subparagraph (C)(1) of this Rule. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:

1. The Licensee sold less than 70% of what the inventory it reported as packaged in the Inventory Tracking System during any 180 day review period;

2. On average during the previous 180 days the Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management tier;

3. Whether the plants/inventory suffered a catastrophic event during the review period;

4. Excise tax payment history;

5. Existing inventory and inventory history;

6. Sales contracts; and

7. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

E. Application for Additional Plants.

1. Retail Marijuana Cultivation Facilities That Have One or Two Harvest Seasons Per Year.

a. After accruing at least one harvest season of Transfers, a Retail Marijuana Cultivation Facility Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That during the previous harvest season prior to the tier increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count;

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System in the previous 360 days to another Retail Marijuana Business;

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the previous 360 days, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count; and

iv. Any other information requested to aid the Division in its evaluation of the production management tier increase application.

b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. *See* Rule 2-205 –Fees.

c. For a Licensee with an authorized plant count in tiers 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. *See* Rule 2-205 – Fees.

d. After accruing one harvest season during which the Retail Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a production management tier 5, two increments of 3,600 plants (7,200 plants total), every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two tiers or increments of 3,600 plants (7,200 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

C. If the Retail Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking System during that time period and/or Transfers into the Retail Marijuana Cultivation Facility or related Retail Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two 3,600 plant increments;

B. The Retail Marijuana Cultivation Facility cultivated at least 90% of its maximum authorized plant count and during the preceding 360 days the Retail Marijuana Cultivation Facility and/or any commonly owned Retail Marijuana Store Transferred in Retail Marijuana from one or more unrelated Retail Marijuana Cultivation Facility(ies);

C. The Retail Marijuana Cultivation has contracts for the sale of Retail Marijuana in the next 360 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Retail Marijuana Cultivation;

E. Any history of noncompliance with the Retail Code, Marijuana Code, and/or Rules by the Retail Marijuana Cultivation Facility, or any commonly owned Retail Marijuana Business, and/or any investigation of, or administrative action(s) against, the Retail Marijuana Cultivation Facility, or any commonly owned Retail Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Retail Marijuana Cultivation Facilities that have more than two harvest seasons per year.

a. After a 180-day period during which the Retail Marijuana Cultivation Facility Transferred and consistently cultivated, the Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That for 180 days prior to the tier increase application, the Licensee consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the 180-day time period if the Licensee cultivated between 75% and 85% of its maximum authorized plant count.

iv. Any other information requested to aid the Division in its evaluation of the tier increase application.

b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. *See* Rule 2-205 – Fees.

c. For a Licensee with an authorized plant count in tier 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. *See* Rule 2-205 – Fees.

d. After accruing 180 days during which the Retail Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a tier 5, two increments of 3,600 plants (7,200 plants

total) every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two tier or two increments of 3,600 plants (7,200 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business;

C. If the Retail Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking system during that time period and/or Transfers into the Retail Marijuana Cultivation Facility or related Retail Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two increments of 3,600 plants;

B. The Retail Marijuana Cultivation Facility cultivated at least 90% of its maximum authorized plant count and during the preceding 180 days the Retail Marijuana Cultivation Facility and/or any commonly owned Retail Marijuana Store Transferred in Retail Marijuana from one or more unrelated Retail Marijuana Cultivation Facility(ies);

C. The Retail Marijuana Cultivation has entered into a written agreement(s) or contract(s) for the sale of Retail Marijuana in the next 180 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Retail Marijuana Cultivation;

E. Any history of noncompliance with the Retail Code, Marijuana Code, and/or Rules by the Retail Marijuana Cultivation Facility or any commonly owned Retail Marijuana Business(es), and/or any investigation of, or administrative action(s) against, the Retail Marijuana Cultivation Facility or any commonly owned Retail Marijuana Business;

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

e. A Retail Marijuana Cultivation Facility that does not have 180 days of cultivating history may apply to increase its plant count to tier 2 or tier 3 pursuant only to this subparagraph (E)(2)(e). A Retail Marijuana Cultivation Facility applying for a tier increase request under this subparagraph (E)(2)(e) must demonstrate all of the following at the time of application:

i. The Retail Marijuana Cultivation Facility making the tier increase request also owns at least three Retail Marijuana Stores with identical Controlling Beneficial Owners;

ii. The Controlling Beneficial Owners of the Retail Marijuana Cultivation Facility and three Retail Marijuana Stores used to support the tier increase request have owned the aforementioned Retail Marijuana Store licenses for at least the preceding 180 days;

iii. The three Retail Marijuana Stores used to support the tier increase request have consistently Transferred Regulated Marijuana to consumers in the preceding 180 days and have a history of wholesale purchases that justify the need for a tier increase above a tier 1;

iv. In the 180 days preceding the Licensee's tier increase request pursuant to this subparagraph (e), the Retail Marijuana Cultivation Facility, three Retail Marijuana Stores, and identical Controlling Beneficial Owners have not been subject to an administrative action issued by the State Licensing Authority;

v. The Retail Marijuana Cultivation Facility making the tier increase request has an established history of responsible cultivation and Transfers of its Regulated Marijuana inventory; and

vi. The Retail Marijuana Cultivation Facility subject to the tier increase request has not previously requested a tier increase pursuant to this subparagraph (e).

3. Application for Tier Increase. Applications for a tier increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.

F. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.

1. A Person that is a Controlling Beneficial Owner in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses in which a Person is a Controlling Beneficial Owner, the Person must also be a Controlling Beneficial Owner in at least one Retail Marijuana Store. For example: (1) a Person that is a Controlling Beneficial Owner in three, four, or five Retail Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least one Retail Marijuana Store; (2) a Person that is a Controlling Beneficial Owner in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least two Retail Marijuana Stores; (3) a Person that is a Controlling Beneficial Owner in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least three Retail Marijuana Stores; etc.

2. A Person that is a Controlling Beneficial Owner in Less than Three Retail Marijuana Cultivation Facility Licenses. A Person that is a Controlling Beneficial Owner in less than three Retail Marijuana Cultivation Facility licenses shall not be required to be a Controlling Beneficial Owner in a Retail Marijuana Store.

G. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in this Rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.

Basis and Purpose – 6-225

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(II), and 44-10-602(6), C.R.S. The purpose of this rule is to establish the circumstances under which a Retail Marijuana Cultivation Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's Regulated Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Cultivation Facility that Transfer Sampling Units. This Rule 6-225 was previously Rule R 507, 1 CCR 212-2.

6-225 – Retail Marijuana Cultivation Facility: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Retail Marijuana Cultivation Facility may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Retail Marijuana Cultivation Facility who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. A person may be designated as a Sampling Manager by more than one Medical Marijuana Business or Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. A Retail Marijuana Cultivation Facility that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-602(6), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-225. *See also* Rule 3-905 – Business Records Required. A Retail Marijuana Cultivation Facility shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana flower or trim shall not exceed one gram.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the

intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Excise Tax Requirements. A Retail Marijuana Cultivation Facility must pay excise tax on Sampling Units of Retail Marijuana flower or trim, based on the average market rate of the unprocessed Retail Marijuana.

D. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Retail Marijuana Cultivation Facility as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Retail Marijuana or eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (D)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (D)(3). Before Transferring any Sampling Units, a Retail Marijuana Cultivation Facility shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (D)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

E. Compensation Prohibited. A Retail Marijuana Cultivation Facility may not use Sampling Units to compensate a Sampling Manager.

F. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

G. Acceptable Purposes. Sampling Units shall only be designated and Transferred for the purposes of quality control and product development in accordance with section 44-10-602(6), C.R.S.

H. Record keeping requirements. A Retail Marijuana Cultivation Facility shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, a Retail Marijuana Cultivation Facility shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of quality control or product development. A Retail Marijuana Cultivation Facility shall also maintain copies of the Retail Marijuana Cultivation Facility's standard operating procedures provided to Sampling Managers

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(II), 44-10-602(13)(a)-(c), 44-10-602(13.5), and 39-28.8-299, C.R.S. The purpose of this rule is to allow a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from "Retail" to "Medical."

6-230 – Retail Marijuana Cultivation Facility: Ability to Change Designation of Regulated Marijuana

A. Changing Designation from Retail Marijuana to Medical Marijuana: Beginning July 1, 2022, a Retail Marijuana Cultivation Facility may Transfer Retail Marijuana to a Medical Marijuana Cultivation Facility in order to change its designation from Retail Marijuana to Medical Marijuana pursuant to the following requirements:

1. The Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana that has passed all required testing;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility share a Licensed Premises in accordance with Rule 3-215;

3. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner;

4. The Retail Marijuana Cultivation Facility must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana to Medical Marijuana occurs;

5. After the designation change, the Medical Marijuana cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The Inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules;

6. Both the Retail Marijuana Cultivation Facility and the Medical Marijuana Cultivation Facility must remain at, or under, its respective inventory limit before and after the Retail Marijuana changes its designation to Medical Marijuana; and

7. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

B. Changing Designation from Medical Marijuana to Retail Marijuana. Beginning January 1, 2023, a Retail Marijuana Cultivation Facility may accept Medical Marijuana from a Medical Marijuana Cultivation Facility in order to change its designation from Medical Marijuana to Retail Marijuana pursuant to the following requirements:

1. The Retail Marijuana Cultivation Facility may only accept Medical Marijuana that has passed all required testing in accordance with the 4-100 Series Rules – Regulated Marijuana Testing Program;

2. The Retail Marijuana Cultivation Facility and the Medical Marijuana Cultivation Facility share a Licensed Premises in accordance with Rule 3-215, unless:

a. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner; and

b. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility cannot share a Licensed Premises because the Local Licensing Authority

or Local Jurisdiction prohibits the operation of either a Medical Marijuana Cultivation Facility or a Retail Marijuana Cultivation Facility.

3. The Retail Marijuana Cultivation Facility and the Medical Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner;

4. The Retail Marijuana Cultivation Facility must receive the Transfer and designate the inventory as Retail Marijuana in the Inventory Tracking System the same day. The Retail Marijuana Cultivation Facility must assign and attach an RFID tag reflecting its Retail Marijuana License number to the Retail Marijuana following completion of the Transfer in the Inventory Tracking System.

5. After the designation change, the Retail Marijuana cannot be Transferred to the originating or any other Medical Marijuana Business or otherwise be treated as Medical Marijuana. The inventory is Retail Marijuana and is subject to all permissions and limitations in these 6-200 Series Rules.

6. Both the Retail Marijuana Cultivation Facility and the Medical Marijuana Cultivation Facility must remain at, or under, its inventory limit before and after the Medical Marijuana changes its designation to Retail Marijuana;

7. The Retail Marijuana Cultivation Facility shall pay any Retail Marijuana excise tax that is imposed pursuant to section 39-28.8-302, C.R.S.;

8. The Retail Marijuana Cultivation Facility shall notify the Local Licensing Authority and Local Jurisdiction where the Retail Marijuana Cultivation Facility and Medical Marijuana Cultivation Facility operate and pay any applicable excise tax on the Retail Marijuana in the manner determine by the Local Licensing Authority or Local Jurisdiction; and

9. Pursuant to the requirements of this subparagraph (B), a Retail Marijuana Cultivation Facility may receive a virtual Transfer of Medical Marijuana that is reflected in the Inventory Tracking System even if the Medical Marijuana is not physically moved prior to the change of designation to Retail Marijuana.

Basis and Purpose – 6-235

The Statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(j.5), 44-10-203(1)(k), 44-10-401(2)(b)(II), and 44-10-502(10)(a)-(c) The purpose of this rule is to allow a Retail Marijuana Cultivation Facility licensees that plan to cultivate Retail Marijuana outdoors to submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event.

6-235 Retail Marijuana Cultivation Facility: Contingency Plan for Outdoor Cultivation

A. Submission of Contingency Plan.

1. Beginning January 1, 2022, Retail Marijuana Cultivation Facility licensees that plan to cultivate Retail Marijuana outdoors may submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event. The Retail Marijuana Cultivation Facility shall also submit a copy of the plan to the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

2. A Retail Marijuana Cultivation Facility may submit a contingency plan at any time, but it must be filed at least 7 days prior to taking action pursuant to the contingency plan and must be approved by the State Licensing Authority prior to taking action pursuant to the contingency plan.

3. After initial submission and approval of a contingency plan, a contingency plan must be submitted with the Retail Marijuana Cultivation Facility's license renewal application. Any significant change to a contingency plan prior to a renewal application must be submitted for review and approval pursuant to subsection (A)(2) above prior to taking action pursuant to the revised contingency plan.

4. The Division shall notify the appropriate Local Licensing Authorities of the approval of the contingency plan.

B. Requirements for Outdoor Contingency Plans.

1. Identification of the type of Adverse Weather Event that the plan applies to, including any deviations based on the type of Adverse Weather Event.

2. Primary contact. A primary contact for the Retail Marijuana Cultivation Facility must be identified on the contingency plan, including the: name, title, phone number, and email address of the primary contact. The Retail Marijuana Cultivation Facility shall notify the Division of any change to the primary contact or required contact information within 48 hours of the change.

3. Transport Manifest. If the contingency plan provides for the Transfer of Retail Marijuana, a Retail Marijuana Cultivation Facility shall submit a standing transport manifest that could be used by a Licensee upon approval during an Adverse Weather Event if creating a transport manifest through the Inventory Tracking System is impracticable. The standing transport manifest shall include: identification and address of the receiving Licensee.

4. Disclosure of Receiving Licensed Premises.

a. Retail Marijuana may only be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or an off-premises storage facility.

b. If Retail Marijuana will be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility pursuant to a contingency plan, that plan must include the name, ownership, and address of the receiving Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility, along with a diagram of the proposed receiving Licensed Premises.

c. The receiving Licensed Premises shall be an existing location that currently holds an approved state and local license or an off-premises storage facility permit. The receiving Licensee is not required to share any Controlling Beneficial Owners with the Transferring Retail Marijuana Cultivation Facility.

d. A Retail Marijuana Cultivation Facility that cultivates outdoors may identify and Transfer Retail Marijuana to no more than five receiving Licensed Premises' as part of a contingency plan.

5. Disclosure of Modifications to the Premises and Security and Surveillance. Proposed modifications to the Licenses Premises and any anticipated impacts to compliance with security and surveillance requirements pursuant to Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6).

C. License Requirements when Acting Pursuant to a Contingency Plan. To the extent that this subsection (C) conflicts with other rule sections, this subsection shall control during the time that a Licensee is acting pursuant to a contingency plan.

1. Notification.

   a. Notification of action pursuant to an approved contingency plan shall be made to the Division within 24 hours after initiating action pursuant to a contingency plan. A Retail Marijuana Cultivation Facility that cultivates outdoors must also notify the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

   b. Notification of ceasing action pursuant to the approved contingency plan shall be made to the Division within 24 hours of returning to normal business operations. If action will continue more than 7 days after initiating action pursuant to a contingency plan, the Licensee shall contact the Division and explain why it cannot return to normal business operations.

   c. Any notification shall be made in writing and can be made by email to the Division.

2. Production Management. Retail Marijuana Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility pursuant to a contingency plan is not included in the receiving Licensed Premises' inventory limit until the Retail Marijuana Cultivation Facility acting pursuant to the contingency plan returns to normal business operations.

3. Modification of Premises. An application for a modification of a Licensed Premises is not required as part of a contingency plan unless the modification or change in premises becomes a permanent modification. If that change becomes a permanent change, a modification of premises application must be submitted within 14 days.

4. Security Requirements. All security and surveillance requirements that apply to a Retail Marijuana Cultivation Facility apply to activities conducted pursuant to the contingency plan. If the contingency plan does not require the Transfer of Regulated Marijuana to another Licensed Premises, but requires plants to be covered or video surveillance to be otherwise temporarily obstructed, exemptions to the video surveillance requirements in Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6) may be approved as part of the contingency plan.

5. Inventory Tracking Requirements. Licensees must use the Inventory Tracking System to ensure Retail Marijuana is identified and tracked during all times that action is being taken pursuant to a contingency plan. If a Retail Marijuana Cultivation Facility harvests, Transfers, or packages Retail Marijuana it must be fully reconciled in the Inventory Tracking System within 48 hours of initiating action pursuant to the contingency plan.

a. Harvest Requirements. If Retail Marijuana is harvested, the weight of Retail Marijuana can be captured on a per harvest level and equally applied to individual plants rather than requiring the initial wet weight of each plant. This initial harvest weight may be captured at a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility upon arrival at the Licensed Premises approved as part of the contingency plan. Harvest Batches and Inventory Tracking System packages must be reported by the Retail Marijuana Cultivation Facility acting pursuant to the contingency plan in the Inventory Tracking System.

b. Transport Manifest. The Retail Marijuana Cultivation Facility acting pursuant to the contingency plan must report all Retail Marijuana that is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility on a transport manifest.

i. A Licensee may use the approved standing transport manifest during an Adverse Weather Event only when using the Inventory Tracking System is not possible.

ii. The Licensee shall manually fill out the dates, times, and individual transporting Retail Marijuana on a copy of the standing transport manifest.

iii. The Licensee shall ensure the standing transport manifest and copy of the approved Contingency plan remain in the Licensee's possession during any transport of Retail Marijuana when it is not possible to use an Inventory Tracking System generated transportation manifest at the time of the Adverse Weather Event.

6. Transfers. If Retail Marijuana is Transferred to another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility it is exempted from the packaging and labeling requirements in Rule 3-1005(B).

7. Virtual and Physical Separation. If Retail Marijuana is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility that inventory must be virtually separated by Harvest Batch and must also be virtually and physically separated from the receiving Licensee's inventory. Harvest Batches must also be clearly identified at the receiving Licensed Premises with the Harvest Batch name and date of harvest.

8. Finishing Product. After Transferring Retail Marijuana to another Licensed Premises, a Retail Marijuana Cultivation Facility may finish that harvest at the receiving Licensed Premises if all Retail Marijuana is accounted for in the Inventory Tracking System and the Licensed Premises is in compliance with all surveillance requirements.

9. Testing. The originating Licensee acting pursuant to a contingency plan is responsible for the submission of Test Batch(es).

a. Each Harvest Batch or Production Batch Transferred pursuant to a contingency plan must be submitted for all required tests and is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

b. Any passing or failing tests of a Harvest Batch or Production Batch Transferred pursuant to a contingency plan will not count for or against a Licensee's Reduced Testing Allowance.

6-300 Series – Retail Marijuana Products Manufacturing Facilities

Basis and Purpose – 6-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-307(1)(j), 44-10-313(14), 44-10-401(2)(b)(III), and 44-10-603, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to a Retail Marijuana Products Manufacturer. This Rule 6-305 was previously Rule R 601, 1 CCR 212-2.

6-305 – Retail Marijuana Products Manufacturer: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Retail Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Retail Marijuana Products Manufacturer comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Retail Marijuana Products Manufacturer comply with all applicable rules. *See* 5-700 Series Rules.

B. Authorized Transfers. A Retail Marijuana Products Manufacturer is authorized to Transfer Retail Marijuana as follows:

1. Retail Marijuana Concentrate and Retail Marijuana Product.

a. A Retail Marijuana Products Manufacturer may Transfer Retail Marijuana Concentrate or Retail Marijuana Product to Retail Marijuana Stores, other Retail Marijuana Products Manufacturers, Retail Marijuana Testing Facilities, Retail Marijuana Hospitality and Sales Businesses, and Pesticide Manufacturers.

b. A Retail Marijuana Products Manufacturer may Transfer Retail Marijuana Product and Retail Marijuana Concentrate to a Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.

i. Prior to any Transfer pursuant to this Rule 6-305(B)(1)(b), a Retail Marijuana Products Manufacturer shall verify the Retail Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. *See* Rule 6-205 – Retail Marijuana Cultivation Facility: License Privileges.

ii. For any Transfer pursuant to this Rule 6-305(B)(1)(b), a Retail Marijuana Products Manufacturer shall only Transfer Retail Marijuana Product and Retail Marijuana Concentrate that is packaged and labeled for Transfer to a consumer. *See* 3-1000 Series Rules.

c. A Retail Marijuana Products Manufacturer and Accelerator Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in compliance with Rules 6-335 and 6-830.

2. Retail Marijuana. A Retail Marijuana Products Manufacturer may Transfer Retail Marijuana to other Retail Marijuana Products Manufacturer, Retail Marijuana Testing Facilities, and Retail Marijuana Stores.

3. Sampling Units. A Retail Marijuana Products Manufacturer may also Transfer Sampling Units of its own Retail Marijuana Concentrate or Retail Marijuana Product to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-603(10), C.R.S., and Rule 6-320.

C. Manufacture of Retail Marijuana Concentrate, Retail Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana Authorized. A Retail Marijuana Products Manufacturer may manufacture, prepare, package, store, and label Retail Marijuana Concentrate and Retail Marijuana Product comprised of Retail Marijuana and other Ingredients intended for use or consumption, such as Edible Retail Marijuana Products, ointments, or tinctures. A Retail Marijuana Products Manufacturer may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

1. ~~Industrial~~ Hemp Product Authorized. ~~This subparagraph (C)(1) is effective July 1, 2020.~~ A Retail Marijuana Products Manufacturer that uses ~~Industrial~~ Hemp Product as an Ingredient in the manufacture and preparation of Retail Marijuana Product must comply with this subparagraph (C)(1) of this Rule.

a. Prior to accepting and taking possession of any ~~Industrial~~ Hemp Product for use as an Ingredient in a Retail Marijuana Product the Retail Marijuana Products Manufacturer shall verify the following:

i. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

ii. That the Person Transferring the ~~Industrial~~ Hemp Product to the Retail Marijuana Products Manufacturer is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

D. Location Prohibited. A Retail Marijuana Products Manufacturer may not manufacture, prepare, package, store, or label Retail Marijuana Concentrate or Retail Marijuana Product in a location that is operating as a retail food establishment.

E. Samples Provided for Testing. A Retail Marijuana Products Manufacturer may provide samples of its Retail Marijuana Concentrate or Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Products Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. A Retail Marijuana Products Manufacturer is authorized to utilize a Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken is a Retail Marijuana Business and the transportation order is delivered to a Retail Marijuana Business, or Pesticide Manufacturer. Nothing in this Rule prevents a Retail Marijuana Products Manufacturer from transporting its own Retail Marijuana.

G. Performance-Based Incentives. A Retail Marijuana Products Manufacturer may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Retail Marijuana Products Manufacturer may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-320 – Sampling Unit Protocols.

Basis and Purpose – 6-310

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(3)(d), 44-10-401(2)(b)(III), 44-10-603, and 44-10-701(2)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Products Manufacturer. This Rule 6-310 was previously Rule R 602, 1 CCR 212-2.

6-310 – Retail Marijuana Products Manufacturer: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. A Retail Marijuana Products Manufacturer is prohibited from Transferring Retail Marijuana Concentrate or Retail Marijuana Product that are not properly packaged and labeled. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. *See* Rule 3-1010 – Packaging and Labeling – General Requirements Prior to Transfer to a Consumer.

1. Exception for Bulk Transfers to Retail Marijuana Hospitality and Sales Businesses. An individually packaged Edible Retail Marijuana Product compromised of multiple servings that is Transferred in bulk to a Retail Marijuana Hospitality and Sales Establishment may include more than a total of 100 milligrams of active THC.

i. A Retail Marijuana Products Manufacturer shall develop and maintain standard operating procedures, and any additional equipment necessary, to ensure that a Retail Marijuana Hospitality and Sales Business receiving bulk Transfers of Edible Retail Marijuana Product can measure accurately the Edible Retail Marijuana Product in single serving sizes equal to or less than 10 milligrams of active THC per serving.

C. Transfer to Consumer Prohibited. A Retail Marijuana Products Manufacturer is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-603(10), C.R.S., and Rule 6-320.

D. Adequate Care of Perishable Product. A Retail Marijuana Products Manufacturer must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

E. Homogeneity of Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Retail Marijuana Product is homogenous.

F. Use of Ingredients. A Retail Marijuana Products Manufacturer must obtain and maintain certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers.

G. Corrective and Preventive Action. This paragraph G shall be effective January 1, 2021. A Retail Marijuana Products Manufacturer shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation.

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

H. Adverse Health Event Reporting. A Retail Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-315

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-401(2)(b)(III), and 44-10-603, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Products Manufacturer and establish standards for the production of Retail Marijuana Concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S. This Rule 6-315 was previously Rule R 605, 1 CR 212-2.

6-315 – Retail Marijuana Products Manufacturer: Retail Marijuana Concentrate Production.

A. Permitted Categories of Retail Marijuana Concentrate Production.

1. A Retail Marijuana Products Manufacturer may produce Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate.

2. A Retail Marijuana Products Manufacturer may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO_2, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless it is approved by the Division.

3. A Retail Marijuana Products Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next formal rulemaking.

B. General Applicability. A Retail Marijuana Products Manufacturer that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. *See* Rule 3-905- Business Records Required.

2. Ensure that all applicable sanitary rules are followed. *See* 3-300 Series Rules.

3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:

   a. Conduct all necessary safety checks prior to commencing production;

   b. Prepare Retail Marijuana for processing;

   c. Extract Cannabinoids and other essential components of Retail Marijuana;

   d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,

   e. Clean all equipment, counters and surfaces thoroughly; and

   f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. *See* Rule 3-230 – Waste Disposal.

4. Establish written and documentable quality control procedures designed to maximize safety for Owner Licensees and Employee Licensees and minimize potential product contamination.

5. Establish written emergency procedures to be followed by Owner Licensees or Employee Licensees in case of a fire, chemical spill or other emergency.

6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate. The training manual must include, but need not be limited to, the following topics:

   a. All standard operating procedures for each method of concentrate production used;

b. The Retail Marijuana Products Manufacturer's quality control procedures;

c. The emergency procedures;

d. The appropriate use of any necessary safety or sanitary equipment;

e. The hazards presented by all solvents used as described in the safety data sheet for each solvent;

f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and

g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner Licensee or Employee Licensee prior to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.

a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.

b. The individual training an Owner Licensee or Employee Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner Licensee or Employee Licensee can safely produce a Retail Marijuana Concentrate. *See* Rule 3-905 – Business Records Required.

c. The Owner Licensee or Employee Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional periodic cleaning required to maintain compliance with all applicable sanitary rules. *See* Rule 3-905 – Business Records Required.

8. Maintain clear and comprehensive records of the name, signature and Owner Licensee or Employee License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. *See* Rule 3-905 – Business Records Required.

C. Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturer that engages in the production of a Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.

2. Ensure that all equipment, counters, and surfaces used in the production of a Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.

3. Ensure that any room in which dry ice is stored or used in processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO_2.

4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Retail Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Physical Separation-Based Retail Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.

7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Retail Marijuana Concentrate.

D. Solvent-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturer that engages in the production of Solvent-Based Retail Marijuana Concentrate must:

1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a Local Jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (http://www.iccsafe.org), the International Fire Code of 2012 (http://www.iccsafe.org) or the National Electric Code of 2014 (http://www.nfpa.org), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;

   a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:

      i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations;

      ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;

      iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and

iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

b. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO_2 is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

d. Material Change. If a Retail Marijuana Products Manufacturer makes a Material Change to its equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its equipment as well.

e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Retail Marijuana Products Manufacturer by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.

f. Records Retention. A Retail Marijuana Products Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule, or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.

2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;

3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;

4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;

a. UL or ETL Listing.

i. If the system is UL or ETL listed, then a Retail Marijuana Products Manufacturer may use the system in accordance with the manufacturer's instructions.

ii. If the system is UL or ETL listed but the Retail Marijuana Products Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Retail Marijuana Products Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

b. Ethanol or Isopropanol. A Retail Marijuana Products Manufacturer need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

a. A Retail Marijuana Products Manufacturer must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. A Retail Marijuana Products Manufacturer must maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. *See* Rule 3-905 – Business Records Required.

b. A Retail Marijuana Products Manufacturer is prohibited from using denatured alcohol to produce a Retail Marijuana Concentrate, unless the denaturant is an approved solvent listed in Rule 6-315(A)(2) and the alcohol and the denaturant meet all other requirements set forth in this Rule.

6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Retail Marijuana Products Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;

7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Solvent-Based Retail Marijuana Concentrate; and

8. Ensure that a trained Owner Licensee or Employee Licensee is present at all times during the production of a Solvent-Based Retail Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.

9. Retail Marijuana Products Manufacturers Engaged in the Remediation of Retail Marijuana for elemental impurities. Retail Marijuana Products Manufacturers engaged in the Remediation of Retail Marijuana for elemental impurities shall:

a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

i. If potentially contaminated equipment, ingredients, or solvents used in the Remediation process are used for processing other 'non remediated' material, the subsequent Production Batch made using the equipment, ingredients, or solvent must then be tested for elemental impurities, and the Production Batch made using that equipment, ingredients, or solvents is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

ii. Manufacturers must document the equipment and lots of ingredients/solvents used in Remediation to ensure this requirement is met.

b. Register as a hazardous waste generator, obtain a U.S. Environmental Protection Agency ID number for manifesting hazardous waste, and must have a disposal contract in place with a hazardous waste management company prior to attempting Remediation.

c. Have a staff member who has received basic training in hazardous waste identification, storage, and disposal procedures, or hire a consultant who satisfies this criteria.

d. Regardless of which type of analyte, if the Retail Marijuana flower, wet whole plant, or trim has failed elemental impurities, the Licensee must implement Standard Operating Procedures to ensure:

i. That contaminated material is stored in a labelled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

ii. That when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards Institute (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

A. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

e. Additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the Licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

f. These steps must be documented in the Licensee's respiratory protection program that all employees exposed to plant material or waste products contaminated with the elemental impurities must be trained on.

g. The Licensee must establish and train employees on SOPs designed to safely handle this contaminated material and prevent cross contamination.

h. Mercury poses additional workplaces hazards since it is easily volatilized and since mercury vapor is highly toxic. Before attempting to remediate any Regulated Marijuana flower, wet whole plant, or trim that has failed elemental impurities testing and contains mercury, Licensees must additionally:

i. Work with a certified industrial hygienist to develop and implement some form of monitoring program that is capable of detecting mercury vapor concentrations in the areas where material contaminated with mercury will be processed and can be used to generate time weighted average exposures to mercury vapor. The monitoring system must be sufficient to ensure airborne concentrations of mercury do not exceed Occupational Safety and Health Administration Permissible Exposure Limits for Airborne Contaminants.

ii. Have a certified industrial hygienist approve the Licensee's air handling system for managing mercury vapors in a fashion that is compliant with the Occupational Safety and Health Administration, and other applicable federal, state, and local regulations.

iii. Utilize a National Institute for Occupational Safety and Health rated half mask respirator with cartridges rated specifically for mercury vapor.

i. A Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

10. Retail Marijuana Products Manufacturer Engaged in the Remediation of Retail Marijuana for Microbial Contamination. Retail Marijuana Products Manufacturers engaged in the Remediation of Retail Marijuana for microbial contamination shall:

a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

b. Ensure that contaminated material is stored in a labeled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

c. Ensure that when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

i. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use

before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

d. Implement additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the Licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

e. These steps must be documented in the Licensee's respiratory protection program that all employees exposed to plant material or waste products contaminated with elemental impurities must be trained on.

f. The Licensee must establish and train employees on standard operating procedures designed to safely handle this contaminated material and prevent cross contamination.

g. The Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

E. Ethanol and Isopropanol. If a Retail Marijuana Products Manufacturer only produces Solvent-Based Retail Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Retail Marijuana Products Manufacturer shall comply with contaminant testing required in Rule 4-120(C)(4).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-320

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(2)(d), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-401(2)(b)(III), and 44-10-603(10), C.R.S. The purpose of this rule is to establish the circumstances under which a Retail Marijuana Products Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Retail Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Products Manufacturer that Transfer Sampling Units. This Rule 6-320 was previously Rule R 606, 1 CCR 212-2.

6-320 – Retail Marijuana Products Manufacturer: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Retail Marijuana Products Manufacturer may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Retail Marijuana Products Manufacturer who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual may be designated as a Sampling Manager by more than one Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. A Retail Marijuana Products Manufacturer who wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-320. *See also* Rule 3-905 – Business Records Required. A Retail Marijuana Products Manufacturer shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana Product shall not exceed one Standardized Serving of Marijuana.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Retail Marijuana Products Manufacturer as a Sampling Manger for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:

   a. With respect to Retail Marijuana Product, fourteen Standardized Servings of Marijuana; and

   b. Eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Retail Marijuana Products Manufacturer shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

D. Compensation Prohibited. A Retail Marijuana Products Manufacturer may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-603(10), C.R.S.

G. Record keeping requirements. A Retail Marijuana Products Manufacturer shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, a Retail Marijuana Products Manufacturer shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Retail Marijuana Products Manufacturer shall also maintain copies of the Retail Marijuana Products Manufacturer's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-325

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(3)(b), 44-10-203(3)(e), 44-10-401(2)(b)(III), 44-10-603, and 44-10-701(3)(c), C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Retail Marijuana Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule 3-1015 may raise public health concerns that outweigh its manufacture or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Retail Marijuana Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Retail Marijuana Product that is not within an intended use identified in Rule 3-1015. This Rule 6-325 was previously Rule R 607, 1 CCR 212-2.

6-325 – Retail Marijuana Products Manufacturing Facility: Audited Product and Alternative Use Product

A. General Rule. A Retail Marijuana Products Manufacturer shall not Transfer Audited Product to a Retail Marijuana Store, another Retail Marijuana Products Manufacturer, or a Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule 6-325. The requirements of this Rule 6-325 are in addition to all other Rules that apply to Retail Marijuana Products Manufacturers; except where the context otherwise clearly requires this Rule 6-325 controls.

B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and, if applicable, to the Local Jurisdiction as required by this Rule, a Retail Marijuana Products Manufacturer may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration.

1. A written audit report from an independent third-party auditor that was completed within the last 24 months shall be submitted to the Division and, if applicable to the Local Licensing Authority: (i) before the first Transfer of Audited Product to any Retail Marijuana Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Retail Marijuana Products Manufacturer's renewal application if the Retail Marijuana Products Manufacturer will Transfer Audited Product after renewal.

2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Retail Marijuana Products Manufacturer shall be responsible for all costs associated with obtaining the independent third-party audit.

3. The independent third-party written audit report shall include the following minimum requirements:

    a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;

    b. Establish that the Retail Marijuana Products Manufacturer and the Audited Product meet all requirements of this Rule 6-325, including but not limited to the specific requirements of this Rule 6-325(C), 6-325(D), 6-325(E), 6-325(G), and 6-325(H);

    c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;

    d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Retail Marijuana Products Manufacturer adheres to all applicable standard operating procedures;

    e. Verify, based upon a physical inspection, of any Licensed Premises that such Licensed Premises complies with the requirements of this Rule 6-325(E), including any Limited Access Area where the Audited Product is to be manufactured;

    f. Include the independent third-party auditor's findings;

    g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and

    h. Include the independent third-party auditor's assessment that the Retail Marijuana Products Manufacturer demonstrated compliance with all requirements of Rule 6-325 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.

C. Products Liability Insurance. Any Retail Marijuana Products Manufacturer that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:

1. Inactive Ingredients. Audited Product must meet the requirements in Rule 3-335 – Production of Regulated Marijuana Products.

a. If the Audited Product contains a fungicidal or bactericidal Ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, the Audited Product is not required to undergo microbial contaminant testing required by Rules 4-115 and 4-120.

2. Required Product Development Testing. The Retail Marijuana Products Manufacturer must establish the Audited Product meets the following through independent third-party testing:

a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Retail Marijuana Products Manufacturer, as demonstrated by testing at a Retail Marijuana Testing Facility.

i. For Audited Product with an intended use of metered dose nasal spray, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.

ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Retail Marijuana Testing Facility.

c. Identification of all non-cannabis derived Ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:

i. Testing by a Retail Marijuana Testing Facility;

ii. Testing by a laboratory that is ISO 17025 accredited but is not a Retail Marijuana Testing Facility, except that no Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred to such a laboratory; and/or

iii. One or more certificate(s) of analysis from the manufacturer of any Ingredient or constituent included in the Audited Product.

E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Retail Marijuana Products Manufacturer, a Retail Marijuana Products Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:

1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Retail Marijuana Products Manufacturer's Licensed Premises. Personnel directly involved in the manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.

2. Facility Requirements. A Retail Marijuana Products Manufacturer must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.

3. Cleaning and Sanitizing. A Retail Marijuana Products Manufacturer must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. A Retail Marijuana Products Manufacturer must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.

4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.

    a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.

6. Ingredient Quality. All Ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the Ingredient or after 1 year from the date of receipt, whichever period is shorter.

7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited Product a Retail Marijuana Products Manufacturer manufactures. A master formulation record must include at least the following information:

    a. Name of the Audited Product;

    b. Ingredient identities and amounts;

c. Specifications on the delivery device (if applicable);

d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;

e. Quality control procedures; and

f. Any other information needed to describe the Retail Marijuana Products Manufacturer's production and ensure its repeatability.

8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:

a. Name of the Audited Product;

b. Master formulation record reference for the Audited Product;

c. Date and time of preparation of the Audited Product;

d. Production Batch number;

e. Signature or initials of individuals involved in each manufacturing step;

f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each Ingredient;

g. Weight or measurement of each Ingredient;

h. Documentation of quality control procedures;

i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and

j. Total quantity of the Audited Product manufactured.

F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in the 4-100 Series Rules for Retail Marijuana Product and/or Audited Product. *See also* Rule 4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program.

G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the 3-1000 Series Rules regarding packaging and labeling for Transfer to a consumer prior to any Transfer.

H. Adverse Health Event Reporting. A Retail Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

I. Alternative Use Designation – Any Other Method of Consumption or Administration. A Retail Marijuana Products Manufacturer shall not Transfer to a Retail Marijuana Store, another Retail Marijuana Products Manufacturer, or Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit any Retail Marijuana Concentrate or Retail Marijuana Product that is not within any intended use identified in Rule 3-1015(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Retail Marijuana Products Manufacturer shall work with the Division and the

Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:

1. The Retail Marijuana Products Manufacturer shall identify provisions of this Rule 6-325 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Retail Marijuana Products Manufacturer shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.

2. The Retail Marijuana Products Manufacturer bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards, and tests are in place.

3. A Retail Marijuana Products Manufacturer seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Retail Marijuana Products Manufacturer does not meet the burden established in this Rule 6-325.

J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Retail Marijuana Products Manufacturer the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. *See* Rules 3-1010 and 3-1015.

K. Required Records. A Retail Marijuana Products Manufacturer manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive Ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule 6-325. *See* Rule 3-905 – Business Records Required.

6-330 – Recall of Retail Marijuana Concentrate and Retail Marijuana Product – Repealed effective January 1, 2021.

Basis and Purpose – 6-335

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(III), and 44-10-603, 44-10-603(15)(a)-(b), and 39-28.8-300 C.R.S. The purpose of this rule is to allow a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from "Retail" to "Medical."

6-335 – Retail Marijuana Products Manufacturer: Ability to Change Designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate.

A. Changing Designation: Beginning July 1, 2022, a Retail Marijuana Products Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in order to change its designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate pursuant to the following requirements:

1. The Retail Marijuana Products Manufacturer may only Transfer Retail Marijuana Concentrate that has passed all required testing;

2. The Medical Marijuana Products Manufacturer and the Retail Marijuana Products Manufacturer share a Licensed Premises in accordance with Rule 3-215;

3. The Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer have at least one identical Controlling Beneficial Owner;

4. The Retail Marijuana Products Manufacturer must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate occurs;

5. After the designation change, the Medical Marijuana Concentrate cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules; and

6. The Transfer and change in designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change in designation.

6-400 Series – Retail Marijuana Testing Facilities

Basis and Purpose – 6-405

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(2)(h), 44-10-203(2)(y), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-313(8)(a), 44-10-313(14), 44-10-401(2)(b)(IV), 44-10-604, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to Retail Marijuana Testing Facilities. This Rule 6-405 was previously Rule R 701.

Please Note: *The following proposed revisions seek to implement SB 23-271 statutory revisions in section 44-10-602*

6-405 – Retail Marijuana Testing Facilities: License Privileges

A. Licensed Premises. A separate License is required for each specific Retail Marijuana Testing Facility and only those privileges granted by the Marijuana Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Testing Facility may share and operate at the same Licensed Premises with a Medical Marijuana Testing Facility with identical ownership.

B. Testing of Retail Marijuana Authorized. A Retail Marijuana Testing Facility may accept Samples of Retail Marijuana from Retail Marijuana Businesses for testing and research purposes only. The Division may require a Retail Marijuana Business to submit a Sample of Retail Marijuana to a Retail Marijuana Testing Facility upon demand.

C. Product Development Authorized. A Retail Marijuana Testing Facility may develop Retail Marijuana Product, but is not authorized to engage in the manufacturing privileges described in section 44-10-603, C.R.S., and Rule 6-305 – Retail Marijuana Manufacturing Facilities: License Privileges.

D. Transferring Samples to Another Licensed and Certified Retail Marijuana Testing Facility. A Retail Marijuana Testing Facility may Transfer Samples to another Retail Marijuana Testing Facility for testing. All laboratory reports provided to or by a Retail Marijuana Business must identify the Retail Marijuana Testing Facility that actually conducted the test.

E. Testing of Registered and Tracked ~~Industrial~~ Hemp Authorized.

1. A Retail Marijuana Testing Facility may accept and test ~~Industrial~~ Hemp as regulated by Article 61 of Title 35, C.R.S.

2. Before a Retail Marijuana Testing Facility accepts a sample of ~~Industrial~~ Hemp, the Retail Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S.

3. A Retail Marijuana Testing Facility is responsible for entering ~~tracking~~ samples of ~~Industrial~~ Hemp in the Inventory Tracking System pursuant to the 3-800 Series Rules.

4. A Retail Marijuana Testing Facility shall be permitted to test ~~Industrial~~ Hemp only in the category(ies) that the Retail Marijuana Testing Facility is certified to perform testing in pursuant to Rule 6-415 – Retail Marijuana Testing Facilities: Certification Requirements.

5. In accordance with section 35-61-105.5, C.R.S., a Retail Marijuana Testing Facility shall provide the results of any testing performed on ~~Industrial~~ Hemp to the Person submitting the sample of ~~Industrial~~ Hemp and to the Colorado Department of Agriculture.

6. Nothing in these rules shall be construed to require a Retail Marijuana Testing Facility to accept and/or test Samples of ~~Industrial~~ Hemp.

F. Testing of ~~Industrial~~ Hemp Product Authorized.

1. A Retail Marijuana Testing Facility may accept and test samples of ~~Industrial~~ Hemp Products.

2. Before a Retail Marijuana Testing Facility accepts a sample of ~~Industrial~~ Hemp Product, the Retail Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

3. A Retail Marijuana Testing Facility is responsible for entering and tracking samples of ~~Industrial~~ Hemp Product in the inventory tracking system pursuant to the 3-800 Series Rules.

4. A Retail Marijuana Testing Facility shall be permitted to test ~~Industrial~~ Hemp Product only in the category(ies) that the Retail Marijuana Testing Facility is certified to perform testing in pursuant to Rule 6-415 – Retail Marijuana Testing Facilities: Certification Requirements.

5. A Retail Marijuana Testing Facility may provide the results of any testing performed on ~~Industrial~~ Hemp Product to the Person submitting the sample of ~~Industrial~~ Hemp Product.

6. Nothing in these rules shall be construed to require a Retail Marijuana Testing Facility to accept and/or test samples of ~~Industrial~~ Hemp Product.

G. Authorized Retail Marijuana Transport. A Retail Marijuana Testing Facility is authorized to utilize a licensed Retail Marijuana Transporter to transport Samples of Retail Marijuana for testing, in accordance with the Marijuana Code and Marijuana Rules, between the originating Retail Marijuana Business requesting testing services and the destination Retail Marijuana Testing Facility performing testing services. Nothing in this Rule requires a Retail Marijuana Business to utilize a Retail Marijuana Transporter to transport Samples of Retail Marijuana for testing.

H. Authorized Transfers.

1. A Retail Marijuana Testing Facility may Transfer Immature Plants, Regulated Marijuana seeds, and Genetic Material to a Regulated Marijuana Cultivation Facility. Any Transfers made under this Rule must be in compliance with the 3-800 and the 3-900 Series Rules.

2. It shall be considered a conflict of interest and a Retail Marijuana Testing Facility shall not perform testing required under the 4-100 Series Rules for a Regulated Marijuana Business Licensee that the Retail Marijuana Testing Facility has Transferred Immature Plants, Regulated Marijuana seeds, or Genetic Material to.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Please Note: *The following proposed revisions seek to implement SB 23-271 statutory revisions in section 44-10-602.*

Basis and Purpose – 6-410

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-202(4), 44-10-203(2)(h), 44-10-203(2)(y), 44-10-203(3)(c), 44-10-203(2)(d), 44-10-401(2)(b)(IV), 44-10-604, 44-10-701, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Testing Facility. This Rule 6-410 was previously Rule R 702, 1 CCR 212-2.

6-410 – Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is Controlling Beneficial Owner or Passive Beneficial of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, Retail Marijuana Store, Medical Marijuana Store, Medical Marijuana Cultivation Facility, or a Medical Marijuana Products Manufacturer shall not be a Controlling Beneficial Owner or Passive Beneficial Owner of a Retail Marijuana Testing Facility.

B. Conflicts of Interest. The Retail Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Retail Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality and integrity of the Retail Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Retail Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample or Test Batch are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Retail Marijuana Business that provided the Sample.

C. Transfer of Retail Marijuana Prohibited. A Retail Marijuana Testing Facility shall not Transfer Retail Marijuana to another Retail Marijuana Business or a consumer, except that a Retail Marijuana Testing Facility may Transfer a Sample to another Retail Marijuana Testing Facility.

D. Destruction of Received Samples. A Retail Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Retail Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. *See* Rule 3-230 – Waste Disposal.

E. Sample Rejection. A Retail Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that the Sample may have been tampered with.

F. Retail Marijuana Business Requirements Applicable. A Retail Marijuana Testing Facility shall be considered a Licensed Premises. A Retail Marijuana Testing Facility shall be subject to all requirements applicable to Retail Marijuana Businesses.

G. Retail Marijuana Testing Facility – Inventory Tracking System Required. A Retail Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Retail Marijuana are identified and tracked from the point they are Transferred from a Retail Marijuana Business through the point of Transfer or destruction or disposal. A Retail Marijuana Testing Facility that performs testing on ~~Industrial~~ Hemp must use the Inventory Tracking System to ensure all samples of ~~Industrial~~ Hemp are identified and tracked from the point they are Transferred from a cultivator registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S., to the point of Transfer or destruction or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Retail Marijuana or ~~Industrial~~ Hemp. *See also* Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System and Rule 3-825 – Reporting and Inventory Tracking System. The Retail Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. *See also* Rule 3-905 – Business Records Required and Rule 3-825.

H. Testing of Unregistered or Untracked ~~Industrial~~ Hemp or ~~Industrial~~ Hemp Products Prohibited.

1. A Retail Marijuana Testing Facility is authorized to accept or test ~~Industrial~~ Hemp only if (1) the entity providing the Samples of ~~Industrial~~ Hemp is regulated by Article 61 of Title 35, C.R.S., (2) the ~~Industrial~~ Hemp is submitted by a registered cultivator, and (3) the ~~Industrial~~ Hemp is tracked in the Inventory Tracking System.

2. A Retail Marijuana Testing Facility is authorized to accept or test ~~Industrial~~ Hemp Product only if (1) the entity providing the Samples of ~~Industrial~~ Hemp Product is registered and regulated pursuant to Article 4 or Title 25, C.R.S., and (2) the ~~Industrial~~ Hemp Product being submitted for testing is tracked in the Inventory Tracking System.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-415

The statutory authority for this rule includes but is not limited to section 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(2)(h), 44-10-203(2)(y), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish a frame work for certification for Retail Marijuana Testing Facilities. This Rule 6-415 was previously Rule R 703, 1 CCR 212-2.

6-415 – Retail Marijuana Testing Facilities: Certification Requirements

A. Certification Types. If certification in a testing category is required by the Division, then the Retail Marijuana Testing Facility must be certified in the category in order to perform that type of testing.

1. Residual solvents;

2. Microbials;

3. Mycotoxins;

4. Pesticides;

5. THC and other Cannabinoid potency;

6. Elemental Impurities; and

7. Water Activity.

B. In order to obtain a certification for Pesticide testing, a Retail Marijuana Testing Facility must also obtain certification for mycotoxin testing.

C. Certification Procedures. The Retail Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in proficiency testing, and ongoing compliance with the applicable requirements in this Rule.

1. Certification Inspection. A Retail Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Retail Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting. In addition, a Retail Marijuana Testing Facility must be accredited under the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO/IEC 17025 standard. In order to obtain certification in a testing category from the Division, the Retail Marijuana Testing Facility's scope of accreditation must specify that particular testing category.

   a. Subsequent to initial approval of a Retail Marijuana Testing Facility License, the Division may grant provisional certification if the Applicant has not yet obtained ISO/IEC 17025:2005 accreditation, but meets all other requirements. Such provisional certification shall be for a period not to exceed twelve months.

3. Personnel Qualifications.

   a. Laboratory Director. A Retail Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. *See* Rule 6-420 – Retail Marijuana Testing Facilities: Personnel.

   b. Employee Competency. A Retail Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on

precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Retail Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

   a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign, and date the revised version prior to use.

   b. A Retail Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. *See* Rule 6-450 – Retail Marijuana Testing Facilities: Records Retention, and Rule 3-905 – Business Records Required.

5. Analytical Processes. A Retail Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Retail Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Retail Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Retail Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Retail Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Retail Marijuana Testing Facility must establish a system to document the complete chain of custody for samples from receipt through disposal.

10. Space. A Retail Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state, and local requirements.

11. Records. A Retail Marijuana Testing Facility must establish a system to retain and maintain records for a period not less than three years. *See* Rules 6-450 – Retail Marijuana Testing Facilities - Records Retention and Rule 3-905 – Business Records Required.

12. Results Reporting. A Retail Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. *See* Rule 3-825 – Reporting and Inventory Tracking System. A Retail Marijuana Testing Facility's process may require that the Regulated Marijuana Business remit payment for any test conducted by the Testing Facility prior to entry of the results of that test into the Inventory Tracking System. A Retail Marijuana Testing Facility's process established under this subparagraph (12) must be maintained on the Licensed Premises of the Retail Marijuana Testing Facility.

13. Conduct While Seeking Certification. A Retail Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the

Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner.

D. Violation Affecting Public Safety. A violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose - 6-420

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-401(2)(b)(IV), 44-10-604, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-420 was previously Rule R 704, 1 CCR 212-2.

6-420 – Retail Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Retail Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Retail Marijuana Testing Facility.

2. The laboratory director for a Retail Marijuana Testing Facility must meet one of the following qualification requirements:

a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;

c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

d. The laboratory director must hold a bachelor's degree in one of the natural sciences and have at least seven years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. *See* Rule 3-905 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Retail Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent

conflicts of interests, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

D. Change in Laboratory Director. In the event that the laboratory director leaves employment at the Retail Marijuana Testing Facility, the Retail Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Division within seven days of the laboratory director's departure; and

2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.

3. The Retail Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.

4. Notwithstanding the requirement of subparagraph (D)(3), the Retail Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Retail Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

E. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and two years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the two years of full-time laboratory experience.

Please Note: *The following revisions are clean-up from rule revisions adopted in 2022, as proposed by the Science & Policy Work Group.*

F. Laboratory Testing Analyst.

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or:

a. Have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing;

~~b. Have at least a bachelor's degree in one of the natural sciences~~;

~~c~~b. Have earned an associated degree in a laboratory science from an accredited institution; or

~~d~~c. Have education and training equivalent to that specified in subparagraph (F)(1) of this Rule that includes at least 60 semester hours, or equivalent, from an accredited institution that, at a minimum, include:

i. 24 semester hours of science courses that include six semester hours of chemistry, six semester hours of biology, and twelve semester hours of chemistry biology, or cannabis laboratory sciences in any combination; and

ii. Have a laboratory training that includes at least three months documented laboratory training each testing category in which the individual performs testing; or

~~e~~d. Have at least five years of full time experience in laboratory testing and have laboratory training that includes at least three months documented laboratory training in each testing category in which the individual performs testing.

2. Responsibilities. In order to independently perform any test for a Retail Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-425

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-202(4), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish standard operating procedure manual standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-425 was previously Rule R 705, 1 CCR 212-2.

6-425 –Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Test Batch receiving;

2. Test Batch accessioning;

3. Test Batch storage;

4. Identifying, rejecting, and reporting unacceptable Test Batches;

5. Recording and reporting discrepancies during Test Batch receiving an accessioning;

6. Security of Test Batches, aliquots and extracts and records;

7. Validating a new or revised method prior to testing of Test Batches to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Test Batch preparation, including but not limited to, sub-sampling for testing, homogenization, and aliquoting Test Batches to avoid contamination and carry-over;

9. Test Batch archive retention to assure stability, as follows:

a. For Test Batches submitted for testing other than Pesticide contaminant testing, Test Batch retention for 14 days;

b. For Test Batch submitted for Pesticide contaminant testing, Test Batch retention for 90 days.

10. Disposal of Test Batches;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology ("NIST");

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical Procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and Test Batch results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results and are corrective actions implemented and documented, and does the laboratory contact the requesting entity

21. Policies and procedures to follow when Test Batch are requested for referral and testing by another certified Retail Marijuana Testing Facility or an approved local or state agency's laboratory;

22. Testing ~~Industrial~~ Hemp, if the Retail Marijuana Testing Facility tests ~~Industrial~~ Hemp;

23. Investigating and documenting existing or potential Nonconformances and implementing Corrective Actions and/or Preventive Actions;

24. Contacting the requesting entity about existing Nonconformances; and

25. Retesting or additional analyses of Test Batches, including but need not be limited to, when it is appropriate to retest or perform an additional analysis of the Test Batch, when it is appropriate to request a new Test Batch from the requesting entity, and when it is appropriate for the requesting entity to request retesting (e.g., after failing Pesticide testing or elemental impurity testing on Regulated Marijuana flower, trim, shake, or wet whole plant as permitted by Rule 4-135(d) and 4-135(D.1));

B. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-430

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-202(4), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-430 was previously Rule R 706, 1 CCR 212-2.

6-430 –Retail Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Retail Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;

2. Perform and document preventive maintenance as required by the manufacturer;

3. Ensure that records are maintained and readily available to the staff operating the equipment;

4. Document the performance of new columns before use;

5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Retail Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Document the changes of septa as specified in the standard operating procedure;

3. Document liners being cleaned or replaced as specified in the standard operating procedure;

4. Ensure that records are maintained and readily available to the staff operating the equipment;

5. Maintain records of mass spectrometric tuning;

6. Establish written criteria for an acceptable mass-spectrometric tune;

7. Document corrective actions if a mass-spectrometric tune is unacceptable;

8. Monitor analytic analyses to check for contamination and carry-over;

9. Use selected ion monitoring within each run to assure that the laboratory compares ion ratios and retention times between calibrators, controls and samples for identification of an analyte;

10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;

12. Define the criteria for designating qualitative results as positive;

13. When a library is used to qualitatively identify an analyte, the identity of the analyte must be confirmed before reporting results by comparing the relative retention time and mass spectrum to that of a known standard or control run on the same system; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g.* clipping or replacing the column or cleaning the source) prior to analyzing subject samples.

C. Immunoassays. A Retail Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a sample is not included within the types of samples approved by the manufacturer; and

4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Retail Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;

2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;

3. Include in their written procedure the storage of unused thin layer chromatographic plates;

4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;

5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;

6. Measure all appropriate RF values for qualitative identification purposes;

7. Use and record sequential color reactions, when applicable;

8. Maintain records of thin layer chromatographic plates; and

9. Analyze an appropriate matrix blank with each batch of Samples analyzed.

E. High Performance Liquid Chromatography ("HPLC"). A Retail Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Monitor and document the performance of the HPLC instrument each day of testing;

4. Evaluate the performance of new columns before use;

5. Create written standards for acceptability when eluting solvents are recycled;

6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Retail Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Maintain records of mass spectrometric tuning;

4. Document corrective actions if a mass-spectrometric tune is unacceptable;

5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;

7. Compare two transitions and retention times between calibrators, controls and samples within each run;

8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and

9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Microbial Assays. A Retail Marijuana Testing Facility using microbial assays must:

1. Perform and document preventive maintenance as required by the manufacturer and standard operating procedures;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a test sample is not included within the types of Test Batches approved by the manufacturer;

4. Verify the method at the action levels for each analyte. Verification at the qualitative presence/absence limit shall include a fractional recovery study unless otherwise completed by the manufacturer and approved by an independent scientific body.

5. Include controls for each batch of test samples. Quantitative microbial methods shall use controls of a specific known value or set of values that lies within the quantifiable range of the method;

6. For molecular methods, the Retail Marijuana Testing Facility shall include controls for each individual analytical run. Quantitative molecular methods shall use controls of a specific known value or set of values that lies within the quantifiable range of the method;

7. PCR-based and qPCR-based methods must include validated internal amplification controls;

8. Microbial methods must include steps to confirm presumptive positive results; confirmation methods may be molecular or cultural or both. Confirmation methods must include quality controls that match the organism which is being confirmed.

H. Water Activity. A Retail Marijuana Testing Facility analyzing water activity must:

1. Perform and document preventive maintenance as required by the manufacturer and standard operating procedures;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Specify all unique method parameters, such as temperature, sample surface area, volatile compound interferences, including but not limited to temperature;

4. Evaluate the performance of the method after routine and preventive maintenance prior to analyzing the Test Batch;

5. Establish criteria for acceptable instrument performance.

I. Analytical Methodology. A Retail Marijuana Testing Facility must validate new methodology and revalidate any changes to approved methodology prior to testing Test Batches. A Retail Marijuana Testing Facility must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:

a. Verification of Accuracy

b. Verification of Precision

c. Verification of Analytical Sensitivity

d. Verification of Analytical Specificity

e. Verification of the LOD

f. Verification of the LOQ

g. Verification of the Reportable Range

h. Identification of Interfering Substances

2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing Samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing Samples.

J. Testing Validation of Complex Matrices. A Retail Marijuana Testing Facility must include a variety of matrices as part of the validation/verification process. During method validation/verification, a Retail Marijuana Testing Facility must:

1. Select matrices which best represent each category of products to be tested as listed in Rule 4-115(D). The laboratory shall independently determine the category of matrix a product falls within; properties to consider include fat content, cannabinoid content, pH, salt content, sugar content, water activity, the presence of know chemical compounds, microbial flora and antimicrobial compounds.

2. Perform a new matrix validation, prior to reporting results, on matrices which are either A) a new category of matrix or B) considerably different from the original matrix validated within the category.

a. For example, the Retail Marijuana Testing Facility intends to receive the topical product “bath bombs” for testing, but previous validation studies for topical product included lotion and massage oil. A new validation should be performed for the product prior to testing since salt content and other properties differ vastly from the original matrices validated.

3. Perform a matrix verification (a client matrix spike or similar consisting of the target analyte(s) at the time of analysis) on matrices submitted for testing which differ slightly from those initially validated but which fall within a category already validated.

a. For example, the Retail Marijuana Testing Facility receives a new edible type matrix for testing (snickerdoodle cookies) but previous validation included gummies and hard candy. A spike of a portion of the submitted material must be analyzed prior to, or at the time of, sample analysis.

K. All Test Batches and ~~Industrial~~ Hemp Product must be tested as received, must not be manipulated, and tested in a manner that ensures results are representative of sample as received.

L. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose - 6-435

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is

to establish a proficiency testing program for Retail Marijuana Testing Facilities. This Rule 6-435 was previously Rule R 707, 1 CCR 212-2.

6-435 – Retail Marijuana Testing Facilities: Proficiency Testing

A. Proficiency Testing Required. A Retail Marijuana Testing Facility must participate in a Proficiency Testing program for each approved category in which it seeks certification under Rule 6-415 – Retail Marijuana Testing Facilities: Certification Requirements.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Retail Marijuana Testing Facility must have successfully participated in Proficiency Testing in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Retail Marijuana Testing Facility must participate in the designated Proficiency Testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.

D. Analyzing Proficiency Testing Samples. A Retail Marijuana Testing Facility must analyze Proficiency Test Samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used in its standard operating procedures.

E. Proficiency Testing Attestation. The laboratory director and all testing analysts who participated in Proficiency Testing must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.

G. Remedial Action. A Retail Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during Proficiency Testing. Remedial action documentation must include a review of Samples tested and results reported since the last successful Proficiency Testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.

H. Unsatisfactory Participation in a Proficiency Testing Event. Unless the Retail Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing event will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive result reported will be considered unsatisfactory participation in the Proficiency Testing event.

I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsatisfactory participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule 6-415 certification.

J. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-440

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Retail Marijuana Testing Facility. This Rule 6-440 was previously Rule R 708, 1 CCR 212-2.

6-440 – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

A. Quality Assurance Program Required. A Retail Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

3. Review of the performance of validated methods used by the Retail Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Retail Marijuana Testing Facility must establish, monitor and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of Samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the standard operating procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the standard operating procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current Standard Operating Procedures Manual for the test or tests to be performed.

C. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-445

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish chain of custody standards for a Retail Marijuana Testing Facility. In addition, it establishes the requirement that a Retail Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains. This Rule 6-445 was previously Rule R 709, 1 CCR 212-2.

6-445 –Retail Marijuana Testing Facilities: Chain of Custody

A. General Requirements. A Retail Marijuana Testing Facility must establish an adequate chain of custody and Test Batch requirement instructions that must include, but not limited to:

1. Issue instructions for the minimum Test Batch requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Test Batch;

3. Document the condition and amount of Test Batch provided at the time of receipt;

4. Document all persons handling the original Test Batches, aliquots, and extracts;

5. Document all Transfers of Test Batches, aliquots, and extracts referred to another certified Retail Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Test Batches;

10. Ensure Test Batches are stored appropriately;

11. Document the disposal of Test Batches, aliquots, and extracts; and

12. Document the License number, Inventory Tracking System number, photograph(s), and the reason for rejection of Test Batches that were rejected to the Division within 7 days of Test Batch submission

B. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-450

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Testing Facility. This Rule 6-450 was previously Rule R 710, 1 CCR 212-2.

6-450 –Retail Marijuana Testing Facilities: Records Retention

A. General Requirement. A Retail Marijuana Testing Facility must maintain all required business records. *See* Rule 3-905 - Business Records Required.

B. Specific Business Records Required: Record Retention. A Retail Marijuana Testing Facility must establish processes to preserve records in accordance with Rule 3-905 that includes, but is not limited to;

1. Test Results, including final and amended reports, and identification of analyst and date of analysis;

2. Quality Control and Quality Assurance Records, including accession numbers, Test Batch type, and acceptable reference range parameters;

3. Standard Operating Procedures;

4. Personnel Records;

5. Chain of Custody Records, including documentation of rejected Test Batches;

6. Proficiency Testing Records; and

7. Analytical Data to include data generated by the instrumentation, raw data of calibration standards and curves.

C. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-455

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to clarify a Retail Marijuana Testing Facility's responsibility to notify the Retail Marijuana Business and accurately report in the inventory tracking system any failed contaminant test result. This Rule 6-455 was previously Rule R 712(D), 1 CCR 212-2.

6-455 – Notification of Retail Marijuana Business

If Retail Marijuana failed a contaminant test, then the Retail Marijuana Testing Facility must immediately (1) notify the Retail Marijuana Business that submitted the Test Batch or Sample for testing and any Person as directed by an approved Research Project (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule 3-825(B).

Basis and Purpose – 6-460

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(3)(c), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish a framework for suspending and reinstating a testing category certification for Retail Marijuana Testing Facilities. This rule also provides the ability for a Retail Marijuana Testing Facility to request a hearing following suspension of a testing category certification.

6-460 – Retail Marijuana Testing Facilities: Certification Suspension, Recertification, and Request for Hearing

A. Certification Suspension. When the Division has objective and reasonable grounds to believe and finds that a Retail Marijuana Testing Facility has been guilty of deliberate and willful violation(s) or that the public health, safety, or welfare imperatively requires emergency action, the Division may immediately suspend the Retail Marijuana Testing Facility's testing category certification in accordance with section 24-4-104, C.R.S., and the 8-200 Series Rules.

B. Re-certification. A Retail Marijuana Testing Facility must provide evidence of corrective actions taken to attempt to resolve the certification suspension and may request that the Division re-certify the Retail Marijuana Testing Facility for a particular testing category in accordance with the requirements in Rule 5-415, if the Retail Marijuana Testing Facility provides documentation requested by the Division and/or the CDPHE demonstrating such corrective actions.

6-500 Series – Retail Marijuana Transporters

Basis and Purpose – 6-505

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-313(14), 44-10-401(2)(b)(V), and 44-10-605, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to Retail Marijuana Transporters. This Rule 6-505 was previously Rule R 1601, 1 CCR 212-2.

6-505 – Retail Marijuana Transporter: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Transporter may share a location with an identically owned Medical Marijuana Transporter. However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Transportation of Retail Marijuana and Retail Marijuana Product Authorized. A Retail Marijuana Transporter may take transportation orders, receive, transport, temporarily store, and deliver Retail Marijuana to Retail Marijuana Businesses.

C. Authorized Sources of Retail Marijuana and Retail Marijuana Product. A Retail Marijuana Transporter may only transport and store Retail Marijuana that it receives directly from a Retail Marijuana Business in accordance with the 3-600 Series Rules.

D. Authorized On-Premises Storage. A Retail Marijuana Transporter is authorized to store transported Retail Marijuana on its Licensed Premises or permitted off-premises storage facility. All transported Retail Marijuana must be secured in a Limited Access Area, and tracked consistently with the inventory tracking rules.

E. Delivery to Consumers Pursuant to Delivery Permit.

1. Prior to January 2, 2021, all Retail Marijuana Transporters are prohibited from delivering Regulated Marijuana to consumers.

2. After January 2, 2021, only Retail Marijuana Transporters that possess a valid delivery permit may delivery Retail Marijuana pursuant to contracts with Retail Marijuana Stores that also possess valid delivery permits. All deliveries of Retail Marijuana consumers must also comply with all requirements of Rule 3-615.

3. Violation affecting Public Safety. Any violation of paragraph E of this Rule is a license violation affecting public safety.

Basis and Purpose – 6-510

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2)(b)(V), and 44-10-605, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Transporter. This Rule 6-510 was previously Rule R 1602, 1 CCR 212-2.

6-510 – Retail Marijuana Transporter: General Limitations or Prohibited Acts

A. Sales, Liens, and Secured Interests Prohibited. A Retail Marijuana Transporter is prohibited from buying, selling, or giving away Retail Marijuana or from receiving complimentary Retail Marijuana. A Retail Marijuana Transporter shall not place or hold a lien or secured interest on Retail Marijuana.

B. Licensed Premises Permitted. A Retail Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily stores any Retail Marijuana or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a Local Jurisdiction that authorizes the operation of Retail Marijuana Stores. If a Retail Marijuana Transporter Licensed Premises shares a Licensed Premises in accordance with Rule 3-215 with a Medical Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall

be in a Local Jurisdiction that authorizes the operation of both Retail Marijuana Stores and Medical Marijuana Stores.

C. Off-Premises Storage Permit. A Retail Marijuana Transporter may maintain one or more permitted off-premises storage facilities. *See* Rule 3-610 – Off-Premises Storage of Regulated Marijuana: All Regulated Marijuana Businesses.

D. Storage Duration. A Retail Marijuana Transporter shall not store Retail Marijuana for longer than seven days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable seven day storage duration begins and applies regardless of which of the Retail Marijuana Transporter's premises receives the Retail Marijuana first, i.e. the Retail Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities. A Retail Marijuana Transporter with a valid delivery permit may store Retail Marijuana for delivery to consumers pursuant to the delivery permit for no longer than seven days from receipt at its Licensed Premises or off-premises storage facility.

E. Control of Retail Marijuana. A Retail Marijuana Transporter is responsible for the Retail Marijuana once it takes control of the Retail Marijuana and until the Retail Marijuana Transporter delivers it to another Retail Marijuana Business, Accelerator Cultivator, Medical Marijuana Cultivation Facility in accordance with Rules 5-235, 6-230, and 6-730, Pesticide Manufacturer, or to a consumer pursuant to a valid delivery permit. For purposes of this Rule, taking control of the Retail Marijuana means removing it from the Retail Marijuana Business's Licensed Premises and placing the Retail Marijuana in the transport vehicle or the Delivery Motor Vehicle.

F. Location of Orders Taken and Delivered. A Retail Marijuana Transporter is permitted to take orders on the Licensed Premises of any Retail Marijuana Business to transport Retail Marijuana between Retail Marijuana Businesses. The Retail Marijuana Transporter shall deliver the Retail Marijuana to the Licensed Premises of a licensed Retail Marijuana Business, or a Pesticide Manufacturer. A Retail Marijuana Transporter may also delivery Retail Marijuana to consumers pursuant to a contract with a Retail Marijuana Store if it possesses a valid delivery permit.

G. A Retail Marijuana Transporter shall receive Retail Marijuana from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee or Pesticide Manufacturer. The Retail Marijuana Transporter shall deliver the Retail Marijuana in the same, unaltered packaging to the final destination Licensee.

H. A Retail Marijuana Transporter with a valid delivery permit shall receive Retail Marijuana that has been weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Retail Marijuana Store or at the Retail Marijuana Store's off-premises storage facility or at the Accelerator Store or the Accelerator Store's off-premises storage facility after receipt of a delivery order. Retail Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Retail Marijuana has been packaged and labeled for delivery to the consumer as required by the 3-1000 Series Rules.

I. A Retail Marijuana Transporter must not deliver Retail Marijuana to consumers while also transporting Regulated Marijuana between Licensed Premises in the Delivery Motor Vehicle.

J. Opening of Bulk Packages or Containers and Re-Packaging Prohibited. A Retail Marijuana Transporter shall not open Containers of Retail Marijuana. Retail Marijuana Transporters are prohibited from re-packaging Retail Marijuana.

K. Temperature-Controlled Transport Vehicles. A Retail Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Retail Marijuana.

L. Damaged, Refused, or Undeliverable Retail Marijuana. Any damaged Retail Marijuana that is undeliverable to the final destination Retail Marijuana Business, or any Retail Marijuana that is refused by the final destination Retail Marijuana Business shall be transported back to the originating Retail Marijuana Business. Any Retail Marijuana that cannot be delivered to a consumer pursuant to a valid delivery permit shall be returned to the originating Retail Marijuana Store or the Retail Marijuana Store's off-premises storage facility within the same business day or pursuant to paragraph D of this Rule.

M. Transport of Retail Marijuana Vegetative Plants Authorized. Retail Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule 2-255. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed.

6-600 Series – Retail Marijuana Business Operators

Basis and Purpose – 6-605

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(b)(VI), and 44-10-606, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to Retail Marijuana Business Operators. This Rule 6-605 was previously Rule R 1701, 1 CCR 212-2.

6-605 – Retail Marijuana Business Operator: License Privileges

A. Privileges Granted. A Retail Marijuana Business Operator shall only exercise those privileges granted to it by the Marijuana Code, the rules promulgated pursuant thereto and the State Licensing Authority. A Retail Marijuana Business Operator may exercise those privileges only on behalf of the Retail Marijuana Business(es) it operates. A Retail Marijuana Business shall not contract to have more than one Retail Marijuana Business Operator providing services to the Retail Marijuana Business at any given time.

B. Licensed Premises of the Retail Marijuana Business(es) Operated. A separate License is required for each specific Retail Marijuana Business Operator, and each such licensed Retail Marijuana Business Operator may operate one or more other Retail Marijuana Business(es). A Retail Marijuana Business Operator will not have its own Licensed Premises, but shall maintain its own place of business, and may exercise the privileges of a Retail Marijuana Business Operator at the Licensed Premises of the Retail Marijuana Business(es) it operates.

C. Entities Eligible to Hold Retail Marijuana Business Operator License. A Retail Marijuana Business Operator License may be held only by a business entity, including, but not limited to, a corporation, limited liability company, partnership, or sole proprietorship.

D. Separate Place of Business. A Retail Marijuana Business Operator shall designate and maintain a place of business separate from the Licensed Premises of any Retail Marijuana Business(es) it operates. A Retail Marijuana Business Operator's separate place of business shall not be considered a Licensed Premises, and shall not be subject to the requirements applicable to the Licensed Premises of other Retail Marijuana Businesses, except as set forth in Rules 6-610 and 6-620. Possession, storage, use, cultivation, manufacture, sale, distribution, or testing of Retail Marijuana is prohibited at a Retail Marijuana Business Operator's separate place of business.

E. Agency Relationship and Discipline for Violations. A Retail Marijuana Business Operator and each of its Controlling Beneficial Owners required to hold an Owner License, as well as the agents and employees of the Retail Marijuana Business Operator, shall be agents of the Retail Marijuana Business(es) the Retail Marijuana Business Operator is contracted to operate, when engaged in activities related, directly, or indirectly, to the operation of such Retail Marijuana

Business(es), including for purposes of taking administrative action against the Retail Marijuana Business being operated. *See* § 44-10-901(1), C.R.S. Similarly, a Retail Marijuana Business Operator and its Controlling Beneficial Owners required to hold an Owner License, as well as the officers, agents and employees of the Retail Marijuana Business Operator, may be disciplined for violations committed by the Controlling Beneficial Owners, agents or employees of the Retail Marijuana Business acting under their direction or control. A Retail Marijuana Business Operator may also be disciplined for violations not directly related to a Retail Marijuana Business it is operating.

F. Compliance with Applicable State and Local Law, Ordinances, Rules, and Regulations. A Retail Marijuana Business Operator, and each of its Controlling Beneficial Owners, agents and employees engaged, directly or indirectly in the operation of the Retail Marijuana Business it operates, shall comply with all state and local laws, ordinances, rules and regulations applicable to the Retail Marijuana Business(es) being operated.

Basis and Purpose – 6-610

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(b)(VI), and 44-10-606, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Business Operator. This Rule 6-610 was previously Rule R 1702, 1 CCR 212-2.

6-610 – Retail Marijuana Business Operators: General Limitations or Prohibited Acts

A. Financial Interest. A Person who holds an Owner's Interest in a Retail Marijuana Business Operator may hold an Owner's Interest in another Retail Marijuana Business. A Retail Marijuana Business may be operated by a Retail Marijuana Business Operator where each has one or more Controlling Beneficial Owners or Passive Beneficial Owners in common. A Person may receive compensation for services provided by a Retail Marijuana Business Operator in accordance with these rules.

B. Sale of Marijuana Prohibited. A Retail Marijuana Business Operator is prohibited from selling, distributing, or Transferring Retail Marijuana to another Retail Marijuana Business or a consumer, except when acting as an agent of a Retail Marijuana Business (s) operated by the Retail Marijuana Business Operator.

C. Consumption Prohibited. A Retail Marijuana Business Operator, and its Controlling Beneficial Owners, Passive Beneficial Owners, agents and employees, shall not permit the consumption of marijuana or marijuana products at its separate place of business.

D. Inventory Tracking System. A Retail Marijuana Business Operator, and any of its Controlling Beneficial Owners, agents or employees engaged in the operation of the Retail Marijuana Business(es) it operates, must use the Inventory Tracking System account of the Retail Marijuana Business(es) it operates, in accordance with all requirements, limitations and prohibitions applicable to the Retail Marijuana Business(es) it operates.

E. Compliance with Requirements and Limitations Applicable to the Retail Marijuana Business(es) Operated. In operating any other Retail Marijuana Business, a Retail Marijuana Business Operator, and its Controlling Beneficial Owners who are required to hold Owner Licenses, as well as the agents and employees of the Retail Marijuana Business Operator, shall comply with all requirements, limitations and prohibitions applicable to the type(s) of Retail Marijuana Business(es) being operated, under state and local laws, ordinances, rules, and regulations, and may be disciplined for violation of the same.

F. Inventory Tracking System Access. A Retail Marijuana Business may grant access to its Inventory Tracking System account to the Controlling Beneficial Owners, agents and employees of a Retail Marijuana Business Operator having duties related to Inventory Tracking System activities of the Retail Marijuana Business(es) being operated.

1. The Controlling Beneficial Owners, agents and employees of a Retail Marijuana Business Operator granted access to a Retail Marijuana Business's Inventory Tracking System account, shall comply with all Inventory Tracking System rules.

2. At least one Controlling Beneficial Owner of a Retail Marijuana Business being operated by a Retail Marijuana Business Operator must be an Inventory Tracking System Trained Administrator for the Retail Marijuana Business's Inventory Tracking System account. That Inventory Tracking System Trained Administrator shall control access to its Inventory Tracking System account, and shall promptly terminate the access of the Retail Marijuana Business Operator's Controlling Beneficial Owners, agents and employees:

a. When its contract with the Retail Marijuana Business Operator expires by its terms;

b. When its contract with the Retail Marijuana Business Operator is terminated by any party; or

c. When it is notified that the License of the Retail Marijuana Business Operator, or a specific Controlling Beneficial Owner, agent or employee of the Retail Marijuana Business Operator, has expired, or has been suspended or revoked.

G. Limitations on Use of Documents and Information Obtained from Retail Marijuana Businesses. A Retail Marijuana Business Operator, and its agents and employees, shall maintain the confidentiality of documents and information obtained from the other Retail Marijuana Business(es) it operates, and shall not use or disseminate documents or information obtained from a Retail Marijuana Business it operates for any purpose not authorized by the Marijuana Code and the rules promulgated pursuant thereto, and shall not engage in data mining or other use of the information obtained from a Retail Marijuana Business to promote the interests of the Retail Marijuana Business Operator or its Controlling Beneficial Owners, Passive Beneficial Owners, agents or employees, or any Person other than the Retail Marijuana Business it operates.

H. Form and Structure of Allowable Agreement(s) Between Operators and Owners. Any agreement between a Retail Marijuana Business and a Retail Marijuana Business Operator:

1. Must acknowledge that the Retail Marijuana Business Operator, and its Controlling Beneficial Owners, agents and employees who are engaged, directly or indirectly, in operating the Retail Marijuana Business, are agents of the Retail Marijuana Business being operated, and must not disclaim an agency relationship;

2. May provide for the Retail Marijuana Business Operator to receive direct remuneration from the Retail Marijuana Business, including a portion of the profits of the Retail Marijuana Business being operated, subject to the following limitations:

a. The portion of the profits to be paid to the Retail Marijuana Business Operator shall be commercially reasonable, and in any event shall not exceed the portion of the net profits to be retained by the Retail Marijuana Business being operated;

b. The Retail Marijuana Business Operator shall not be granted, and may not accept:

i. A security interest in the Retail Marijuana Business being operated, or in any assets of the Retail Marijuana Business;

ii. An ownership or membership interest, shares, or shares of stock, or any right to obtain any direct or indirect beneficial ownership interest in the Retail Marijuana Business being operated, or a future or contingent right to the same, including but not limited to options or warrants;

c. The Retail Marijuana Business Operator shall not guarantee the Retail Marijuana Business's debts or production levels.

3. Shall permit the Retail Marijuana Business being operated to terminate the contract with the Retail Marijuana Business Operator at any time, with or without cause.

I. A Retail Marijuana Business Operator may engage in dual operation of a Retail Marijuana Business and a Medical Marijuana Business at a single location, to the extent the Retail Marijuana Business being operated is permitted to do so, the Retail Marijuana Business Operator shall comply with the rules promulgated pursuant to the Marijuana Code, including the requirement of obtaining a valid registration as a Medical Marijuana Business Operator.

J. Any Retail Marijuana Business Operators and the Retail Marijuana Business Operator's Owner Licensee(s) that are appointed by a court to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Retail Marijuana Business must comply with Rule 2-275(F).

Basis and Purpose – 6-615

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-313(12), 44-10-401(2)(b)(VI), and 44-10-401(2)(c) C.R.S. The purpose of this rule is to establish employee license requirements for the Retail Marijuana Business Operator's Controlling Beneficial Owners, agents and employees, including those directly or indirectly engaged in the operation of other Retail Marijuana Business(es). This Rule 6-615 was previously Rule R 1703, 1 CCR 212-2.

6-615 – Retail Marijuana Business Operators: Employee Licenses for Personnel

A. Required Licenses.

1. Owner Licenses. All natural persons who are Controlling Beneficial Owners in a Retail Marijuana Business Operator must have a valid Owner License, associated with the Retail Marijuana Business Operator License. Such an Owner License shall satisfy all licensing requirements for work related to the business of the Retail Marijuana Business Operator and for work performed on behalf of, or at the Licensed Premises of, the Retail Marijuana Business(es) operated by the Retail Marijuana Business Operator.

2. Employee Licenses. All other natural persons who are agents or employees of a Retail Marijuana Business Operator that are actively engaged, directly or indirectly, in the management, supervision, or operation of one or more other Retail Marijuana Businesses, including but not limited to all agents or employees who will come into contact with Retail Marijuana, who will have access to Limited Access Areas, or who will have access to the Inventory Tracking System account of the Retail Marijuana Business(es) being operated, must hold a valid Employee License. The Employee License shall satisfy all licensing requirements for work related to the business of the Retail Marijuana Business Operator and for work at the Licensed Premises of, or on

behalf of, the Retail Marijuana Business(es) operated by the Retail Marijuana Business Operator.

B. Employee Licenses Not Required. Employee Licenses are not required for Passive Beneficial Owners of a Retail Marijuana Business Operator, or for natural persons who will not come into contact with Retail Marijuana, will not have access Limited Access Area(s) of the Retail Marijuana Business(es) being operated, and will not have access to the Inventory Tracking System account of the Retail Marijuana Business(es) being operated.

C. Designation of Management Personnel of a Retail Marijuana Business Operated by a Retail Marijuana Business Operator. If a Retail Marijuana Business Operator is contracted to manage the overall operations of a Retail Marijuana Business's Licensed Premises, the Retail Marijuana Business shall designate a separate and distinct management personnel on the Licensed Premises who is an officer, agent or employee of the Retail Marijuana Business Operator, which shall be a natural person with a valid Owner License or Employee License, as set forth in paragraph A of this Rule, and the Retail Marijuana Business shall comply with the reporting provisions of subsection 44-10-313(12), C.R.S.

Basis and Purpose – 6-620

The statutory authority for this rule includes but is not limited to 44-10-202(1)(c), 44-10-203(1)(c), and 44-10-203(1)(k), C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Business Operators. This Rule 6-620 was previously Rule R 1704, 1 CCR 212-2.

6-620 – Retail Marijuana Business Operators: Business Records Required

A. General Requirement. A Retail Marijuana Business Operator must maintain all required business records as set forth in Rule 3-905 - Business Records Required, except that:

1. A Retail Marijuana Business Operator is not required to maintain secure facility information, diagrams of its designated place of business, or a visitor log for its separate place of business, because a Retail Marijuana Business Operator will not come into contact with Retail Marijuana at its separate place of business; and

2. A Retail Marijuana Business Operator is not required to maintain records related to inventory tracking, or transport, because a Retail Marijuana Business Operator is prohibited from engaging in activities on its own behalf that would require inventory tracking or transport. All records relating to inventory tracking activities and records related to transport pertaining to the Retail Marijuana Business(es) operated by the Retail Marijuana Business Operator shall be maintained at the Licensed Premises of such Retail Marijuana Business(es).

B. All records required to be maintained shall be maintained at the Licensed Premises of the Retail Marijuana Business(es) it operates.

6-700 Series – Accelerator Cultivator Licenses

Please Note: *The following proposed revisions seek to implement SB 23-271 statutory revisions in section 44-10-602.*

Basis and Purpose – 6-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-203(2)(r), 44-10-203(2)(aa), 44-10-203(3)(c), 44-

10-401(2)(b)(VII), 44-10-602, and 44-10-607 C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to an Accelerator Cultivator licensee.

6-705 – Accelerator Cultivator: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Cultivator may operate on the same Licensed Premises as a Retail Marijuana Cultivation Facility that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Cultivator may operate on a separate premises in the possession of a Retail Marijuana Cultivation Facility that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Cultivation Facility. However, a separate license is required for each specific business or business entity, regardless of geographical location. A Regulated Marijuana Business that is operating at the same premises as a commonly owned Medical Marijuana Business may become an Accelerator-Endorsed Licensee. An Accelerator Cultivator may operate at the premises where the Accelerator-Endorsed Licensee operates along with the commonly owned Medical Marijuana Cultivation Facility.

B. Cultivation of Retail Marijuana and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate Authorized. An Accelerator Cultivator may propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate. An Accelerator Cultivator may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate.

C. Authorized Transfers. An Accelerator Cultivator may only Transfer Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate to another Retail Marijuana Business or to a Medical Marijuana Cultivation Facility in compliance with Rule 6-230.

1. An Accelerator Cultivator shall not Transfer Flowering plants. An Accelerator Cultivator may only Transfer Vegetative plants as authorized pursuant to Rule 3-605.

2. An Accelerator Cultivator may Transfer Sampling Units of Retail Marijuana or Retail Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-602(6), C.R.S., and Rule 6-725.

3. An Accelerator Cultivator may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Accelerator Cultivator or Retail Marijuana Cultivation Facility prior to testing required by these rules for the purpose of Decontamination only after all other steps outlined in the Accelerator Cultivator's standard operating procedures have been completed, including but not limited to drying, curing, and trimming.

4. An Accelerator Cultivator may Transfer Immature Plants, Retail Marijuana seeds, and Genetic Material to a Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator. Transfers made under this Rule must be in compliance with the 3-800 and the 3-900 Rules Series.

D. Authorized On-Premises Storage. An Accelerator Cultivator is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

E. Samples Provided for Testing. An Accelerator Cultivator may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The Accelerator Cultivator shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. An Accelerator Cultivator is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents an Accelerator Cultivator from transporting its own Retail Marijuana.

G. Performance-Based Incentives. An Accelerator Cultivator may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, an Accelerator Cultivator may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-725 – Sampling Unit Protocols.

H. Authorized Sources of Retail Marijuana, Seeds, ~~and~~ Immature Plants, and Genetic Material.

1. An Accelerator Cultivator ~~shall only~~may obtain Retail Marijuana seeds or Immature Plants from its own Retail Marijuana, properly Transferred Medical Marijuana cultivated at a Medical Marijuana Cultivation Facility with at least one identical Controlling Beneficial Owner, or properly Transferred from another Retail Marijuana Business pursuant to the inventory tracking requirements in the 3-800 Series Rules. An Accelerator Cultivator may not bring seeds, Immature Plants, or other marijuana that is not Regulated Marijuana onto the Licensed Premises at any time.

2. An Accelerator Cultivator may obtain Retail Marijuana seeds, Immature Plants, and Genetic Material from:

a. Another Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility;

b. A Retail Marijuana Testing Facility;

c. A marijuana cultivation or testing facility licensed or otherwise approved pursuant to a permit or registration issued by a government agency to operate in another state or territory of the United States; or

d. Pursuant to any federal legal authority allowing interstate commerce of Regulated Marijuana.

3. Transfers made under subparagraph (H)(2) of this Rule must be in compliance with the 3-800 and the 3-900 Rules Series.

I. Centralized Distribution Permit. An Accelerator Cultivator may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Accelerator Stores.

1. For purposes of a Centralized Distribution Permit only, the term “commonly owned” means at least one natural person has a minimum of five percent ownership in both the Accelerator Cultivator possessing a Centralized Distribution Permit and the Accelerator

Store to which the Retail Marijuana Concentrate and Retail Marijuana Product will be Transferred.

2. To apply for a Centralized Distribution Permit, an Accelerator Cultivator may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Accelerator Cultivator shall send a copy of its Centralized Distribution Permit addendum to the Local Licensing Authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.

3. An Accelerator Cultivator that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Retail Marijuana Concentrate and Retail Marijuana Product from a Retail Marijuana Products Manufacturer for the sole purpose of temporary storage and Transfer to commonly owned Accelerator Stores.

   a. An Accelerator Cultivator may only accept Retail Marijuana Concentrate and Retail Marijuana Product that is packaged and labeled for sale to a consumer pursuant to the 3-1000 Series Rules.

   b. An Accelerator Cultivator storing Retail Marijuana Concentrate and Retail Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Retail Marijuana Concentrate or Retail Marijuana Product on the Accelerator Cultivator's Licensed Premises for more than 90 days from the date of receipt.

   c. All Transfers of Retail Marijuana Concentrate and Retail Marijuana Product by an Accelerator Cultivator pursuant to a Centralized Distribution Permit shall be without consideration.

4. All security and surveillance requirements that apply to an Accelerator Cultivator apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

J. Transition Permit. An Accelerator Cultivator may only operate at two geographical locations pursuant to Rule 2-255(D).

Basis and Purpose – 6-710

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-602, 44-10-701(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by an Accelerator Cultivator.

6-710 - Accelerator Cultivator: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. An Accelerator Cultivator is prohibited from Transferring Retail Marijuana that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. Transfer to Consumer Prohibited. An Accelerator Cultivator is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-602(6), C.R.S., and Rule 6-725.

C. Excise Tax Paid. An Accelerator Cultivator shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S.

D. Corrective and Preventive Action. This paragraph D shall be effective January 1, 2021. An Accelerator Cultivator shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

E. Adverse Health Event Reporting. An Accelerator Cultivator must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-715

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(r), 44-10-401(2)(b)(VII), and 44-10-602, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at Accelerator Cultivator and standards for the production of Retail Marijuana Concentrate.

6-715 – Accelerator Cultivator: Retail Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. An Accelerator Cultivator may only produce Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. *See* Rule 3-905- Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of An Accelerator Cultivator unless the Controlling Beneficial Owner(s) of the Accelerator Cultivator also has a valid

Accelerator Manufacturer license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If An Accelerator Cultivator produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Controlling Beneficial Owners and Employee Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon an Accelerator Manufacturer that produces Retail Marijuana Concentrate, including all general requirements. *See* 3-300 Series Rules – Health and Safety Regulations and Rule 6-815 – Accelerator Manufacturer: Retail Marijuana Concentrate Production.

C. Possession of Other Categories of Retail Marijuana Concentrate.

1. It shall be considered a violation of this Rule if an Accelerator Cultivator possesses a Retail Marijuana Concentrate other than a Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises unless: the Controlling Beneficial Owner(s) of the Accelerator Cultivator also has a valid Accelerator Manufacturer license; or the Accelerator Cultivator has been issued a Centralized Distribution Permit and is in possession of the Retail Marijuana Concentrate in compliance with Rule 6-705(I).

2. Notwithstanding subparagraph (C)(1) of this Rule 6-715, an Accelerator Cultivator shall be permitted to possess Solvent-Based Retail Marijuana Concentrate only when the possession is due to the Transfer of Retail Marijuana flower or trim that failed microbial testing to an Accelerator Manufacturer for processing into a Solvent-Based Retail Marijuana Concentrate, and the Accelerator Manufacturer Transfers the resultant Solvent-Based Retail Marijuana Concentrate back to the originating Accelerator Cultivator.

a. The Accelerator Cultivator shall comply with all requirements in Rule 4-135(C) when having Solvent-Based Retail Marijuana Concentrate manufactured out of Retail Marijuana flower or trim that failed microbial testing.

b. The Accelerator Cultivator is responsible for submitting the Solvent-Based Retail Marijuana Concentrate for all required testing for contaminants pursuant to Rule 4-120 – Regulated Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Rules or the Marijuana Code.

c. Nothing in this Rule removes or alters the responsibility of the Accelerator Cultivator that Transfers the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule 6-210(C).

D. Production of Alternative Use Product or Audited Product Prohibited. An Accelerator Cultivator shall not produce an Alternative Use Product or Audited Product.

E. Possession of Alternative Use Product or Audited Product. An Accelerator Cultivator is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Accelerator Cultivator received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from an Accelerator Manufacturer that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule 6-325.

Basis and Purpose – 6-720

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(6), 44-10-401(2)(b)(VII), 44-10-602 and 44-10-607 C.R.S. The rule establishes a means by which to manage the overall production of Retail Marijuana in the state of Colorado. The intent of this rule is to encourage responsible production to meet demand for Retail Marijuana consumers, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule.

6-720 - Accelerator Cultivator: Production Management

A. Number of Accelerator Cultivators per Licensed Premises

1. An Accelerator Cultivator may only own and operate a single Accelerator Cultivation per Licensed Premises.

2 A Retail Marijuana Cultivation Facility Licensee that is an Accelerator-Endorsed Licensee may host more than one Accelerator Cultivation owned by different Social Equity Licensees at a single Licensed Premises.

B. Production Management.

1. Production Management Tiers.

a. Tier 1: 1 - 1,800 plants

b. Tier 2: 1,801 – 3,600 plants

c. Tier 3: 3,601 – 6,000 plants

d. Tier 4: 6,001 – 10,200 plants

e. Tier 5: 10,201 – 13,800+ plants

i. Tier 5 shall not have a cap on the maximum authorized plant count.

ii. The maximum authorized plant count above 10,200 plants shall increase in one or two increments of 3,600 plants. An Accelerator Cultivator shall be allowed to increase its maximum authorized plant count one or two increments of 3,600 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule 6-720.

2. All Accelerator Cultivator licenses granted on or after January 1, 2020, will be issued as a Tier 1 License.

3. Immature Plants. For purposes of calculating the maximum number of authorized plants, Immature Plants are excluded.

4. Ground for Denial. The Division may deny an application for additional plants pursuant to paragraph E of this Rule if the Licensee exceeded the authorized plant count during the relevant time period for production.

5. Violation Affecting Public Safety. It may be considered a license violation affecting public safety for a Licensee to exceed the authorized plant count pursuant to these Rules.

C. Inventory Management.

1. Inventory Management for Accelerator Cultivators that Have One or Two Harvest Seasons a Year. Beginning the 721st day from the commencement of its first cultivation activities, an Accelerator Cultivator that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 720 days.

2. Inventory Management for Accelerator Cultivators That Have More Than Two Harvest Seasons a Year. Beginning the 181st day from the commencement of its first cultivation activities, an Accelerator Cultivator that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 180 days.

D. Tier Decrease. For Accelerator Cultivators that are authorized to cultivate more than 1,800 plants, the Division may review the purchases, Transfers, and cultivated plant count of the Accelerator Cultivator in connection with the license renewal process or after an investigation. Based on the Division's review, the Division may reduce the Accelerator Cultivator's maximum allowed plant count to a lower production management tier pursuant to subparagraph (C)(1) of this Rule. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:

1. The Accelerator Licensee sold less than 70% of what the inventory it reported as packaged in the Inventory Tracking System during any 180 day review period;

2. On average during the previous 180 days the Accelerator Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management tier;

3. Whether the plants/inventory suffered a catastrophic event during the review period;

4. Excise tax payment history;

5. Existing inventory and inventory history;

6. Sales contracts; and

7. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

E. Application for Additional Plants.

1. Accelerator Cultivators That Have One or Two Harvest Seasons Per Year.

a. After accruing at least one harvest season of Transfers, an Accelerator Cultivator may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That during the previous harvest season prior to the tier increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count;

ii. That the Accelerator Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System in the previous 360 days to another Retail Marijuana Business;

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the previous 360 days, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count; and

iv. Any other information requested to aid the Division in its evaluation of the production management tier increase application.

b. If the Division approves the production management tier increase application, the Accelerator Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants.

c. For an Accelerator Licensee with an authorized plant count in tiers 2-5 to continue producing at its expanded authorized plant count, the Accelerator Licensee shall pay the requisite Accelerator Cultivator license fee and the expanded production management tier fee, if applicable, at license renewal.

d. After accruing one harvest season during which the Accelerator Cultivator Transferred and consistently cultivated the Accelerator Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a production management Tier 5, two increments of 3,600 plants (7,200 plants total), every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two tiers or increments of 3,600 plants (7,200 plants total).

i. The Accelerator Licensee must demonstrate:

A. That the Accelerator Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Accelerator Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

C. If the Accelerator Cultivator cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking System during that time period and/or Transfers into the Accelerator Cultivator or related Accelerator Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Accelerator Cultivator currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two 3,600 plant increments;

B. The Accelerator Cultivator cultivated at least 90% of its maximum authorized plant count and during the preceding 360 days the Accelerator Cultivator and/or any commonly owned Accelerator Store Transferred in Retail Marijuana from one or more unrelated Accelerator Cultivator(s) or Retail Marijuana Cultivation Facility(ies);

C. The Accelerator Cultivator has contracts for the sale of Retail Marijuana in the next 360 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Accelerator Cultivator;

E. Any history of noncompliance with the Marijuana Code and/or Rules by the Accelerator Cultivator, or any commonly owned Retail Marijuana Business, and/or any investigation of, or administrative action(s) against, the Accelerator Cultivator, or any commonly owned Retail Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Accelerator Cultivators that have more than two harvest seasons per year.

a. After a 180-day period during which the Accelerator Cultivator Transferred and consistently cultivated, the Accelerator Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That for 180 days prior to the tier increase application, the Accelerator Licensee consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and

ii. That the Accelerator Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the 180-day time period if the Licensee cultivated between 75% and 85% of its maximum authorized plant count.

iv. Any other information requested to aid the Division in its evaluation of the tier increase application.

b. If the Division approves the production management tier increase application, the Accelerator Licensee shall pay the applicable expanded production management tier fee, if applicable, prior to cultivating the additional authorized plants.

c. For an Accelerator Licensee with an authorized plant count in tier 2-5 to continue producing at its expanded authorized plant count, the Accelerator Licensee shall pay the requisite Accelerator Cultivator license fee and the applicable expanded production management tier fee, if applicable, at license renewal.

d. After accruing 180 days during which the Accelerator Cultivator Transferred and consistently cultivated the Accelerator Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a tier 5, two increments of 3,600 plants (7,200 plants total) every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two tier or two increments of 3,600 plants (7,200 plants total).

i. The Accelerator Licensee must demonstrate:

A. That the Accelerator Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Accelerator Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business;

C. If the Accelerator Cultivator cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking system during that time period and/or Transfers into the Accelerator Cultivator or related Accelerator Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Accelerator Cultivator currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two increments of 3,600 plants;

B. The Accelerator Cultivator cultivated at least 90% of its maximum authorized plant count and during the preceding 180 days the Accelerator Cultivator and/or any commonly owned Accelerator Store Transferred in Retail Marijuana from one or more unrelated Accelerator Cultivator(s) or Retail Marijuana Cultivation Facility(ies);

C. The Accelerator Cultivator has entered into a written agreement(s) or contract(s) for the sale of Retail Marijuana in the next 180 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Accelerator Cultivator;

E. Any history of noncompliance with the Marijuana Code and/or Rules by the Accelerator Cultivator or any commonly owned Retail Marijuana Business(es), and/or any investigation of, or administrative action(s) against, the Accelerator Cultivator or any commonly owned Retail Marijuana Business;

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

3. Application for Tier Increase. Applications for a tier increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.

Basis and Purpose – 6-725

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(VII), 44-10-602(6) and 44-10-607, C.R.S. The purpose of this rule is to establish the circumstances under which an Accelerator Cultivator may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's Regulated Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on an Accelerator Cultivator that Transfer Sampling Units.

6-725 – Accelerator Cultivator - Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, an Accelerator Cultivator may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Accelerator Cultivator who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. A person may be designated as a Sampling Manager by more than one Medical Marijuana Business or Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. An Accelerator Cultivator that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-602(6), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-225. *See also* Rule 3-905 – Business Records Required. An Accelerator Cultivator shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production

Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana flower or trim shall not exceed one gram.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Excise Tax Requirements. An Accelerator Cultivator must pay excise tax on Sampling Units of Retail Marijuana flower or trim, based on the average market rate of the unprocessed Retail Marijuana.

D. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Accelerator Cultivator as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Retail Marijuana or eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (D)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (D)(3). Before Transferring any Sampling Units, an Accelerator Cultivator shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (D)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

E. Compensation Prohibited. An Accelerator Cultivator may not use Sampling Units to compensate a Sampling Manager.

F. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

G. Acceptable Purposes. Sampling Units shall only be designated and Transferred for the purposes of quality control and product development in accordance with section 44-10-602(6), C.R.S.

H. Record keeping requirements. An Accelerator Cultivator shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, an Accelerator Cultivator shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of quality control or product development. An Accelerator Cultivator shall also maintain copies of the Accelerator Cultivator standard operating procedures provided to Sampling Managers.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-730

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(II), 44-10-602(13)(a)-(c), 44-10-602(13.5), 44-10-607, and 39-28.8-301, C.R.S. The purpose of this rule is to allow a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from "Retail" to "Medical."

6-730 – Accelerator Cultivator: Ability to Change Designation of Regulated Marijuana

A. Changing Designation from Retail Marijuana to Medical Marijuana. Beginning July 1, 2022, an Accelerator Cultivator may Transfer Retail Marijuana to a Medical Marijuana Cultivation Facility in order to change its designation from Retail Marijuana to Medical Marijuana pursuant to the following requirements:

1. The Accelerator Cultivator may only Transfer Retail Marijuana that has passed all required testing;

2. The Medical Marijuana Cultivation Facility and the Accelerator Cultivator share a Licensed Premises in accordance with Rule 3-215;

3. The Medical Marijuana Cultivation Facility and Accelerator Cultivator have at least one identical Controlling Beneficial Owner;

4. The Accelerator Cultivator must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana to Medical Marijuana occurs;

5. After the designation change, the Medical Marijuana cannot be Transferred to the originating Accelerator Cultivator or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The Inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules;

6. Both the Accelerator Cultivator and the Medical Marijuana Cultivation Facility must remain at, or under, its respective inventory limit before and after the Retail Marijuana changes its designation to Medical Marijuana; and

7. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

B. Changing Designation from Medical Marijuana to Retail Marijuana. Beginning January 1, 2023, an Accelerator Cultivator may accept Medical Marijuana from a Medical Marijuana Cultivation Facility in order to change its designation from Medical Marijuana to Retail Marijuana pursuant to the following requirements:

1. The Accelerator Cultivator may only accept Medical Marijuana that has passed all required testing in accordance with the 4-100 Series Rules – Regulated Marijuana Testing Program;

2. The Accelerator Cultivator and the Medical Marijuana Cultivation Facility share a Licensed Premises in accordance with Rule 3-215, unless:

a. The Accelerator Cultivator and Medical Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner; and

b. The Accelerator Cultivator and the Medical Marijuana Cultivation Facility cannot share a Licensed Premises because the Local Licensing Authority or Local Jurisdiction prohibits the operation of either a Retail Marijuana Cultivation Facility or a Medical Marijuana Cultivation Facility.

3. The Accelerator Cultivator and Medical Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner;

4. The Accelerator Cultivator must receive the Transfer and designate the inventory as Retail Marijuana in the Inventory Tracking System the same day. The Accelerator Cultivator must assign and attach an RFID tag reflecting its Accelerator Cultivator License number to the Retail Marijuana following completion of the Transfer in the Inventory Tracking System;

5. After the designation change, the Retail Marijuana cannot be Transferred to the originating or any other Medical Marijuana Business or otherwise be treated as Medical Marijuana. The inventory is Retail Marijuana and is subject to all permissions and limitations in the 6-200 Series Rules and these 6-700 Series Rules;

6. Both the Accelerator Cultivator and the Medical Marijuana Cultivation Facility must remain at, or under, its inventory limit before and after the Medical Marijuana changes its designation to Retail Marijuana;

7. The Accelerator Cultivator shall pay any Retail Marijuana excise tax that is imposed pursuant to section 39-28.8-302, C.R.S.;

8. The Accelerator Cultivator shall notify the Local Licensing Authority and Local Jurisdiction where the Accelerator Cultivator and the Medical Marijuana Cultivation Facility operate and pay any applicable excise tax on the Retail Marijuana in the manner determined by the Local Licensing Authority and Local Jurisdiction; and

9. Pursuant to the requirements of this subparagraph (B), an Accelerator Cultivator may receive a virtual Transfer of Medical Marijuana that is reflected in the Inventory Tracking System even if the Medical Marijuana is not physically moved prior to the change of designation to Retail Marijuana.

Basis and Purpose – 6-735

The Statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(j.5), 44-10-203(1)(k), 44-10-401(2)(b)(II), and 44-10-502(10)(a)-(c) The purpose of this rule is to allow an Accelerator Cultivator licensees that plan to cultivate Retail Marijuana outdoors to submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event.

6-735 Accelerator Cultivator: Contingency Plan for Outdoor Cultivation

A. Submission of Contingency Plan.

1. Beginning January 1, 2022, Accelerator Cultivator Licensees that plan to cultivate Retail Marijuana outdoors may submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event. The Accelerator Cultivator shall also submit a copy of the plan to the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a

Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

2. An Accelerator Cultivator may submit a contingency plan at any time, but it must be filed at least 7 days prior to taking action pursuant to the contingency plan and must be approved by the State Licensing Authority prior to taking action pursuant to the contingency plan.

3. After initial submission and approval of a contingency plan, a contingency plan must be submitted with the Accelerator Cultivator's license renewal application. Any significant change to a contingency plan prior to a renewal application must be submitted for review and approval pursuant to subsection (A)(2) above prior to taking action pursuant to the revised contingency plan.

4. The Division shall notify the appropriate Local Licensing Authorities of the approval of the contingency plan.

B. Requirements for Outdoor Contingency Plans.

1. Identification of the type of Adverse Weather Event that the plan applies to, including any deviations based on the type of Adverse Weather Event.

2. Primary contact. A primary contact for the Accelerator Cultivator must be identified on the contingency plan, including the: name, title, phone number, and email address of the primary contact. The Accelerator Cultivator shall notify the Division of any change to the primary contact or required contact information within 48 hours of the change.

3. Transport Manifest. If the contingency plan provides for the Transfer of Retail Marijuana, an Accelerator Cultivator shall submit a standing transport manifest that could be used by a Licensee upon approval during an Adverse Weather Event if creating a transport manifest through the Inventory Tracking System is impracticable. The standing transport manifest shall include: identification and address of the receiving Licensee.

4. Disclosure of Receiving Licensed Premises.

a. Retail Marijuana may only be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or an off-premises storage facility.

b. If Retail Marijuana will be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility pursuant to a contingency plan, that plan must include the name, ownership, and address of the receiving Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility, along with a diagram of the proposed receiving Licensed Premises.

c. The receiving Licensed Premises shall be an existing location that currently holds an approved state and local license or an off-premises storage facility permit. The receiving Licensee is not required to share any Controlling Beneficial Owners with the Transferring Retail Marijuana Cultivation Facility.

d. An Accelerator Cultivator that cultivates outdoors may identify and Transfer Retail Marijuana to no more than five receiving Licensed Premises' as part of a contingency plan.

5. Disclosure of Modifications to the Premises and Security and Surveillance. Proposed modifications to the Licenses Premises and any anticipated impacts to compliance with security and surveillance requirements pursuant to Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6).

C. License Requirements when Acting Pursuant to a Contingency Plan. To the extent that this subsection (C) conflicts with other rule sections, this subsection shall control during the time that a Licensee is acting pursuant to a contingency plan.

1. Notification.

a. Notification of action pursuant to an approved contingency plan shall be made to the Division within 24 hours after initiating action pursuant to a contingency plan. An Accelerator Cultivator that cultivates outdoors must also notify the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

b. Notification of ceasing action pursuant to the approved contingency plan shall be made to the Division within 24 hours of returning to normal business operations. If action will continue more than 7 days after initiating action pursuant to a contingency plan, the Licensee shall contact the Division and explain why it cannot return to normal business operations.

c. Any notification shall be made in writing and can be made by email to the Division.

2. Production Management. Retail Marijuana Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility pursuant to a contingency plan is not included in the receiving Licensed Premises' inventory limit until the Accelerator Cultivator acting pursuant to the contingency plan returns to normal business operations.

3. Modification of Premises. An application for a modification of a Licensed Premises is not required as part of a contingency plan unless the modification or change in premises becomes a permanent modification. If that change becomes a permanent change, a modification of premises application must be submitted within 14 days.

4. Security Requirements. All security and surveillance requirements that apply to an Accelerator Cultivator apply to activities conducted pursuant to the contingency plan. If the contingency plan does not require the Transfer of Regulated Marijuana to another Licensed Premises, but requires plants to be covered or video surveillance to be otherwise temporarily obstructed, exemptions to the video surveillance requirements in Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6) may be approved as part of the contingency plan.

5. Inventory Tracking Requirements. Licensees must use the Inventory Tracking System to ensure Retail Marijuana is identified and tracked during all times that action is being taken pursuant to a contingency plan. If an Accelerator Cultivator harvests, Transfers, or

packages Retail Marijuana it must be fully reconciled in the Inventory Tracking System within 48 hours of initiating action pursuant to the contingency plan.

a. Harvest Requirements. If Retail Marijuana is harvested, the weight of Retail Marijuana can be captured on a per harvest level and equally applied to individual plants rather than requiring the initial wet weight of each plant. This initial harvest weight may be captured at a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility upon arrival at the Licensed Premises approved as part of the contingency plan. Harvest Batches and Inventory Tracking System packages must be reported by the Retail Marijuana Cultivation Facility acting pursuant to the contingency plan in the Inventory Tracking System.

b. Transport Manifest. The Accelerator Cultivator acting pursuant to the contingency plan must report all Retail Marijuana that is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility on a transport manifest.

i. A Licensee may use the approved standing transport manifest during an Adverse Weather Event only when using the Inventory Tracking System is not possible.

ii. The Licensee shall manually fill out the dates, times, and individual transporting Retail Marijuana on a copy of the standing transport manifest.

iii. The Licensee shall ensure the standing transport manifest and copy of the approved Contingency plan remain in the Licensee's possession during any transport of Retail Marijuana when it is not possible to use an Inventory Tracking System generated transportation manifest at the time of the Adverse Weather Event.

6. Transfers. If Retail Marijuana is Transferred to another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility it is exempted from the packaging and labeling requirements in Rule 3-1005(B).

7. Virtual and Physical Separation. If Retail Marijuana is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility that inventory must be virtually separated by Harvest Batch and must also be virtually and physically separated from the receiving Licensee's inventory. Harvest Batches must also be clearly identified at the receiving Licensed Premises with the Harvest Batch name and date of harvest.

8. Finishing Product. After Transferring Retail Marijuana to another Licensed Premises, an Accelerator Cultivator may finish that harvest at the receiving Licensed Premises if all Retail Marijuana is accounted for in the Inventory Tracking System and the Licensed Premises is in compliance with all surveillance requirements.

9. Testing. The originating Licensee acting pursuant to a contingency plan is responsible for the submission of Test Batch(es).

a. Each Harvest Batch or Production Batch Transferred pursuant to a contingency plan must be submitted for all required tests and is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

b. Any passing or failing tests of a Harvest Batch or Production Batch Transferred pursuant to a contingency plan will not count for or against a Licensee's Reduced Testing Allowance.

6-800 Series – Accelerator Manufacturer Licenses

Basis and Purpose – 6-805

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(2)(aa), 44-10-307(1)(j), 44-10-401(2)(b)(VIII), 44-10-603 and 44-10-608, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to an Accelerator Manufacturer.

6-805 – Accelerator Manufacturer: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Manufacturer may operate on the same Licensed Premises as a Retail Marijuana Products Manufacturer that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Manufacturer may operate on a separate premises in the possession of a Retail Marijuana Products Manufacturer that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer Facility. However, a separate license is required for each specific business or business entity, regardless of geographical location. A Regulated Marijuana Business that is operating at the same premises as a commonly owned Medical Marijuana Business may become an Accelerator-Endorsed Licensee. An Accelerator Manufacturer may operate at the premises where the Accelerator-Endorsed Licensee operates along with the commonly owned Medical Marijuana Products Manufacturer.

B. Authorized Transfers. An Accelerator Manufacturer is authorized to Transfer Retail Marijuana as follows:

1. Retail Marijuana Concentrate and Retail Marijuana Product.

a. An Accelerator Manufacturer may Transfer Retail Marijuana Concentrate or Retail Marijuana Product to Retail Marijuana Stores, Accelerator Stores, other Accelerator Manufacturers, Retail Marijuana Products Manufacturers, Retail Marijuana Testing Facilities, Retail Marijuana Hospitality and Sales Businesses, and Pesticide Manufacturers.

b. An Accelerator Manufacturer may Transfer Retail Marijuana Product and Retail Marijuana Concentrate to a Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.

i. Prior to any Transfer pursuant to this Rule 6-805(B)(1)(b), an Accelerator Manufacturer shall verify the Retail Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. *See* Rule 6-205 – Retail Marijuana Cultivation Facility: License Privileges.

ii. For any Transfer pursuant to this Rule 6-805(B)(1)(b), an Accelerator Manufacturer shall only Transfer Retail Marijuana Product and Retail Marijuana Concentrate that is packaged and labeled for Transfer to a consumer. *See* 3-1000 Series Rules.

c. An Accelerator Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in compliance with Rule 6-335.

2. Retail Marijuana. An Accelerator Manufacturer may Transfer Retail Marijuana to other Accelerator Manufacturers, Retail Marijuana Products Manufacturer, Retail Marijuana Testing Facilities, Accelerator Stores, and Retail Marijuana Stores.

3. Sampling Units. An Accelerator Manufacturer may also Transfer Sampling Units of its own Retail Marijuana Concentrate or Retail Marijuana Product to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-603(10), C.R.S., and Rule 6-820.

C. Manufacture of Retail Marijuana Concentrate and Retail Marijuana Product and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana Authorized. An Accelerator Manufacturer may manufacture, prepare, package, store, and label Retail Marijuana Concentrate and Retail Marijuana Product comprised of Retail Marijuana and other Ingredients intended for use or consumption, such as Edible Retail Marijuana Products, ointments, or tinctures. An Accelerator Manufacturer may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

1. ~~Industrial~~ Hemp Product Authorized. An Accelerator Manufacturer that uses ~~Industrial~~ Hemp Product as an Ingredient in the manufacture and preparation of Retail Marijuana Product must comply with this subparagraph (C)(1) of this Rule.

a. Prior to accepting and taking possession of any ~~Industrial~~ Hemp Product for use as an Ingredient in a Retail Marijuana Product the Accelerator Manufacturer shall verify the following:

i. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

ii. That the Person Transferring the ~~Industrial~~ Hemp Product to the Accelerator Manufacturer is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

D. Location Prohibited. An Accelerator Manufacturer may not manufacture, prepare, package, store, or label Retail Marijuana Concentrate or Retail Marijuana Product in a location that is operating as a retail food establishment.

E. Samples Provided for Testing. An Accelerator Manufacturer may provide samples of its Retail Marijuana Concentrate or Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Accelerator Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. An Accelerator Manufacturer is authorized to utilize a Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken is a Retail Marijuana Business and the transportation order is delivered to a Retail Marijuana Business or Pesticide Manufacturer. Nothing in this Rule prevents an Accelerator Manufacturer from transporting its own Retail Marijuana.

G. Performance-Based Incentives An Accelerator Manufacturer may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, an Accelerator Manufacturer may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-820 – Sampling Unit Protocols.

Basis and Purpose – 6-810

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(2)(aa), 44-10-203(3)(d), 44-10-401(2)(b)(VIII), 44-10-603, 44-10-608 and 44-10-701(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by an Accelerator Manufacturer.

6-810 – Accelerator Manufacturer: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. An Accelerator Manufacturer is prohibited from Transferring Retail Marijuana Concentrate or Retail Marijuana Product that are not properly packaged and labeled. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. *See* Rule 3-1010 – Packaging and Labeling – General Requirements Prior to Transfer to a Consumer.

1. Exception for Bulk Transfers to Retail Marijuana Hospitality and Sales Businesses. An individually packaged Edible Retail Marijuana Product comprised of multiple servings that is Transferred in bulk to a Retail Marijuana Hospitality and Sales Establishment may include more than a total of 100 milligrams of active THC.

i. An Accelerator Manufacturer shall develop and maintain standard operating procedures, and any additional equipment necessary, to ensure that a Retail Marijuana Hospitality and Sales Business receiving bulk Transfers of Edible Retail Marijuana Product can measure accurately the Edible Retail Marijuana Product in single serving sizes equal to or less than 10 milligrams of active THC per serving.

C. Transfer to Consumer Prohibited. An Accelerator Manufacturer is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-603(10), C.R.S., and Rule 6-820.

D. Adequate Care of Perishable Product. An Accelerator Manufacturer must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

E. Homogeneity of Edible Retail Marijuana Product. An Accelerator Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Retail Marijuana Product is homogenous.

F. Use of Ingredients. An Accelerator Manufacturer must obtain and maintain certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers.

G. Corrective and Preventive Action. This paragraph G shall be effective January 1, 2021. An Accelerator Manufacturer shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements

listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation.

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

H. Adverse Health Event Reporting. An Accelerator Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-815

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-401(2)(b)(VIII), 44-10-203(2)(aa), 44-10-603, and 44-10-608, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at an Accelerator Manufacturer and establish standards for the production of Retail Marijuana Concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S.

6-815 – Accelerator Manufacturer: Retail Marijuana Concentrate Production

A. Permitted Categories of Retail Marijuana Concentrate Production.

1. An Accelerator Manufacturer may produce Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate.

2. An Accelerator Manufacturer may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO_2, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless it is approved by the Division.

3. An Accelerator Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next permanent rulemaking.

B. General Applicability. An Accelerator Manufacturer that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. *See* Rule 3-905- Business Records Required.

2. Ensure that all applicable sanitary rules are followed. *See* 3-300 Series Rules.

3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:

   a. Conduct all necessary safety checks prior to commencing production;

   b. Prepare Retail Marijuana for processing;

   c. Extract Cannabinoids and other essential components of Retail Marijuana;

   d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,

   e. Clean all equipment, counters and surfaces thoroughly; and

   f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. *See* Rule 3-230 – Waste Disposal.

4. Establish written and documentable quality control procedures designed to maximize safety for Owner Licensees and Employee Licensees and minimize potential product contamination.

5. Establish written emergency procedures to be followed by Owner Licensees or Employee Licensees in case of a fire, chemical spill or other emergency.

6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate. The training manual must include, but need not be limited to, the following topics:

   a. All standard operating procedures for each method of concentrate production used;

   b. The Accelerator Manufacturer's quality control procedures;

   c. The emergency procedures;

   d. The appropriate use of any necessary safety or sanitary equipment;

   e. The hazards presented by all solvents used as described in the safety data sheet for each solvent;

f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and

g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner Licensee or Employee Licensee prior to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.

a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.

b. The individual training an Owner Licensee or Employee Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner Licensee or Employee Licensee can safely produce a Retail Marijuana Concentrate. *See* Rule 3-905 – Business Records Required.

c. The Owner Licensee or Employee Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional periodic cleaning required to maintain compliance with all applicable sanitary rules. *See* Rule 3-905 – Business Records Required.

8. Maintain clear and comprehensive records of the name, signature and Owner Licensee or Employee License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. *See* Rule 3-905 – Business Records Required.

9. <u>Accelerator Manufacturers Engaged in the Remediation of Retail Marijuana for elemental impurities</u>. Retail Marijuana Products Manufacturers engaged in the Remediation of Retail Marijuana for elemental impurities shall:

a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

i. If potentially contaminated equipment, ingredients, or solvents used in the Remediation process are used for processing other 'non remediated' material, the subsequent Production Batch made using the equipment, ingredients, or solvent must then be tested for elemental impurities, and the Production Batch made using that equipment, ingredients, or solvents is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

ii. Manufacturers must document the equipment and lots of ingredients/solvents used in Remediation to ensure this requirement is met.

b. Register as a hazardous waste generator, obtain a U.S. Environmental Protection Agency ID number for manifesting hazardous waste, and must have a

disposal contract in place with a hazardous waste management company prior to attempting Remediation.

c. Have a staff member who has received basic training in hazardous waste identification, storage, and disposal procedures, or hire a consultant who satisfies this criteria.

d. Regardless of which type of analyte, if the Retail Marijuana flower, wet whole plant, or trim has failed testing for elemental impurities, the Licensee must implement Standard Operating Procedures to ensure:

i. That contaminated material is stored in a labelled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

ii. That when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards Institute (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

A. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

e. Additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

f. These steps must be documented in the licensee's respiratory protection program that all employees exposed to elemental impurities contaminated plant material and waste products must be trained on.

g. The Licensee must establish and train employees on SOPs designed to safely handle this contaminated material and prevent cross contamination.

h. Mercury poses additional workplaces hazards since it is easily volatilized and since mercury vapor is highly toxic. Before attempting to remediate any Regulated Marijuana flower, wet whole plant, or trim that has failed elemental impurities testing and contains mercury, Licensees must additionally:

i. Work with a certified industrial hygienist to develop and implement some form of monitoring program that is capable of detecting mercury vapor concentrations in the areas where material contaminated with mercury will be processed and can be used to generate time weighted average

exposures to mercury vapor. The monitoring system must be sufficient to ensure airborne concentrations of mercury do not exceed Occupational Safety and Health Administration Permissible Exposure Limits for Airborne Contaminants.

ii. Have a certified industrial hygienist approve the licensee's air handling system for managing mercury vapors in a fashion that is compliant with the Occupational Safety and Health Administration, and other applicable federal, state, and local regulations.

iii. Utilize a National Institute for Occupational Safety and Health rated half mask respirator with cartridges rated specifically for mercury vapor.

i. A Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

C. Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate. An Accelerator Manufacturer that engages in the production of a Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.

2. Ensure that all equipment, counters, and surfaces used in the production of a Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.

3. Ensure that any room in which dry ice is stored or used in processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO_2.

4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Retail Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Physical Separation-Based Retail Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.

7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Retail Marijuana Concentrate.

D. Solvent-Based Retail Marijuana Concentrate. An Accelerator Manufacturer that engages in the production of Solvent-Based Retail Marijuana Concentrate must:

1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a Local Jurisdiction has not adopted a local building code or fire code or if

local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (http://www.iccsafe.org), the International Fire Code of 2012 (http://www.iccsafe.org) or the National Electric Code of 2014 (http://www.nfpa.org), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;

a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:

   i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations;

   ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;

   iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and

   iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

b. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO_2 is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

d. Material Change. If an Accelerator Manufacturer makes a Material Change to its equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its equipment as well.

e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Accelerator

Manufacturer by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.

f. Records Retention. An Accelerator Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule, or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.

2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;

3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;

4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;

a. UL or ETL Listing.

i. If the system is UL or ETL listed, then an Accelerator Manufacturer may use the system in accordance with the manufacturer's instructions.

ii. If the system is UL or ETL listed but the Accelerator Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Accelerator Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

b. Ethanol or Isopropanol. An Accelerator Manufacturer need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

a. An Accelerator Manufacturer must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. An Accelerator Manufacturer must

maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. *See* Rule 3-905 – Business Records Required.

b. An Accelerator Manufacturer is prohibited from using denatured alcohol to produce a Retail Marijuana Concentrate, unless the denaturant is an approved solvent listed in Rule 6-815(A)(2) and the alcohol and the denaturant meet all other requirements set forth in this Rule.

6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may an Accelerator Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;

7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Solvent-Based Retail Marijuana Concentrate; and

8. Ensure that a trained Owner Licensee or Employee Licensee is present at all times during the production of a Solvent-Based Retail Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.

E. Ethanol and Isopropanol. If an Accelerator Manufacturer only produces Solvent-Based Retail Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Accelerator Manufacturer shall comply with contaminant testing required in Rule 4-120(C)(4).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-820

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(2)(d), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-401(2)(b)(VIII), 44-10-603(10), and 44-10-608 C.R.S. The purpose of this rule is to establish the circumstances under which an Accelerator Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Retail Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on an Accelerator Manufacturer that Transfer Sampling Units.

6-820 – Accelerator Manufacturer: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, an Accelerator Manufacturer may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Accelerator Manufacturer who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual may be designated as a Sampling Manager by more than one Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. An Accelerator Manufacturer who wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-820. *See also* Rule 3-905 – Business Records Required. An Accelerator Marijuana Products Manufacturer shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana Product shall not exceed one Standardized Serving of Marijuana.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Accelerator Manufacturer as a Sampling Manger for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:

   a. With respect to Retail Marijuana Product, fourteen Standardized Servings of Marijuana; and

   b. Eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, an Accelerator Manufacturer shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

D. Compensation Prohibited. An Accelerator Manufacturer may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-603(10), C.R.S.

G. Record keeping requirements. An Accelerator Manufacturer shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, an Accelerator Manufacturer shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. An Accelerator Manufacturer shall also maintain copies of the Accelerator Manufacturer's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-825

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(3)(b), 44-10-203(3)(e), 44-10-401(2)(b)(VIII), 44-10-603, 44-10-701(3)(c) and 44-10-608, C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Accelerator Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule 3-1015 may raise public health concerns that outweigh its manufacture or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for an Accelerator Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Retail Marijuana Product that is not within an intended use identified in Rule 3-1015.

6-825 – Accelerator Manufacturer: Audited Product and Alternative Use Product

A. General Rule. An Accelerator Manufacturer shall not Transfer Audited Product to a Retail Marijuana Store, an Accelerator Store, a Retail Marijuana Products Manufacturer, another Accelerator Manufacturer, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule 6-825. The requirements of this Rule 6-825 are in addition to all other Rules that apply to Accelerator Manufacturers; except where the context otherwise clearly requires this Rule 6-825 controls.

B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and, if applicable, to the Local Jurisdiction as required by this Rule, an Accelerator Manufacturer may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration.

1. A written audit report from an independent third-party auditor that was completed within the last 24 months shall be submitted to the Division and, if applicable to the Local Licensing Authority: (i) before the first Transfer of Audited Product to any Retail Marijuana

Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Accelerator Manufacturer's renewal application if the Accelerator Manufacturer will Transfer Audited Product after renewal.

2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Accelerator Manufacturer shall be responsible for all costs associated with obtaining the independent third-party audit.

3. The independent third-party written audit report shall include the following minimum requirements:

   a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;

   b. Establish that the Accelerator Manufacturer and the Audited Product meet all requirements of this Rule 6-825, including but not limited to the specific requirements of this Rule 6-825(C), 6-825(D), 6-825(E), 6-825(G), and 6-825(H);

   c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;

   d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Accelerator Manufacturer adheres to all applicable standard operating procedures;

   e. Verify, based upon a physical inspection, of any Licensed Premises that such Licensed Premises complies with the requirements of this Rule 6-825(E), including any Limited Access Area where the Audited Product is to be manufactured;

   f. Include the independent third-party auditor's findings;

   g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and

   h. Include the independent third-party auditor's assessment that the Accelerator Manufacturer demonstrated compliance with all requirements of Rule 6-825 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.

C. Products Liability Insurance. Any Accelerator Manufacturer that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:

1. Inactive Ingredients. Audited Product must meet the requirements in Rule 3-335 – Production of Regulated Marijuana Products.

a. If the Audited Product contains a fungicidal or bactericidal Ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, the Audited Product is not required to undergo microbial contaminant testing required by Rules 4-115 and 4-120.

2. Required Product Development Testing. The Accelerator Manufacturer must establish the Audited Product meets the following through independent third-party testing:

a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Accelerator Manufacturer, as demonstrated by testing at a Retail Marijuana Testing Facility.

i. For Audited Product with an intended use of metered dose nasal spray, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.

ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Retail Marijuana Testing Facility.

c. Identification of all non-cannabis derived Ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:

i. Testing by a Retail Marijuana Testing Facility;

ii. Testing by a laboratory that is ISO 17025 accredited but is not a Retail Marijuana Testing Facility, except that no Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred to such a laboratory; and/or

iii. One or more certificate(s) of analysis from the manufacturer of any Ingredient or constituent included in the Audited Product.

E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Accelerator Manufacturer, an Accelerator Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:

1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Accelerator Marijuana Products Manufacturer's Licensed Premises. Personnel directly involved in the

manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.

2. Facility Requirements. An Accelerator Manufacturer must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.

3. Cleaning and Sanitizing. An Accelerator Manufacturer must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. An Accelerator Manufacturer must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.

4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.

    a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.

6. Ingredient Quality. All Ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the Ingredient or after 1 year from the date of receipt, whichever period is shorter.

7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited Product an Accelerator Manufacturer manufactures. A master formulation record must include at least the following information:

    a. Name of the Audited Product;

    b. Ingredient identities and amounts;

    c. Specifications on the delivery device (if applicable);

    d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;

    e. Quality control procedures; and

    f. Any other information needed to describe the Retail Marijuana Products Manufacturer's production and ensure its repeatability.

8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:

    a. Name of the Audited Product;

    b. Master formulation record reference for the Audited Product;

    c. Date and time of preparation of the Audited Product;

    d. Production Batch number;

    e. Signature or initials of individuals involved in each manufacturing step;

    f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each Ingredient;

    g. Weight or measurement of each Ingredient;

    h. Documentation of quality control procedures;

    i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and

    j. Total quantity of the Audited Product manufactured.

F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in the 4-100 Series Rules for Retail Marijuana Product and/or Audited Product. *See also* Rule 4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program.

G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the 3-1000 Series Rules regarding packaging and labeling for Transfer to a consumer prior to any Transfer.

H. Adverse Event Reporting. An Accelerator Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

I. Alternative Use Designation – Any Other Method of Consumption or Administration. An Accelerator Manufacturer shall not Transfer to a Retail Marijuana Store, an Accelerator Store, a Retail Marijuana Products Manufacturer, another Accelerator Manufacturer, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator that has obtained a Centralized Distribution Permit any Retail Marijuana Concentrate or Retail Marijuana Product that is not within any intended use identified in Rule 3-1015(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Accelerator Manufacturer shall work with the Division and the Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:

    1. The Accelerator Manufacturer shall identify provisions of this Rule 6-825 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Accelerator Manufacturer

shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.

2. The Accelerator Manufacturer bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards, and tests are in place.

3. An Accelerator Manufacturer seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Accelerator Manufacturer does not meet the burden established in this Rule 6-825.

J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Accelerator Manufacturer the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. *See* Rules 3-1010 and 3-1015.

K. Required Records. An Accelerator Manufacturer manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive Ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule 6-825. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 6-830

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(III), and 44-10-603, 44-10-603(15)(a)-(b), 44-10-608, and 39-28.8-302, C.R.S. The purpose of this rule is to allow a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from “Retail” to “Medical.”

6-830 – Accelerator Manufacturer: Ability to Change Designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate.

A. Changing Designation: Beginning July 1, 2022, an Accelerator Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in order to change its designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate pursuant to the following requirements:

1. The Accelerator Manufacturer may only Transfer Retail Marijuana Concentrate that has passed all required testing;

2. The Medical Marijuana Products Manufacturer and the Accelerator Manufacturer share a Licensed Premises in accordance with Rule 3-215;

3. The Medical Marijuana Products Manufacturer and Accelerator Manufacturer have at least one identical Controlling Beneficial Owner;

4. The Accelerator Manufacturer must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate occurs;

5. After the designation change, the Medical Marijuana Concentrate cannot be Transferred to the originating Accelerator Manufacturer or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules; and

6. The Transfer and change in designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change in designation.

6-900 Series – Licensed Hospitality Businesses

Basis and Purpose – 6-905

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish general provisions for Licensed Hospitality Businesses.

6-905 – Licensed Hospitality Businesses: General Provisions

A. Privileges Granted. A Licensed Hospitality Business shall only exercise those privileges granted pursuant to the Marijuana Code and these Rules.

B. Local Approval Required. No Licensed Hospitality Business may operate in a Local Jurisdiction that does not have an ordinance or resolution authorizing the operation of that type of Licensed Hospitality Business within the Local Jurisdiction. A Licensed Hospitality Business must comply with any requirements or restrictions on its operations imposed by the Local Jurisdiction's ordinance or resolution.

C. Liability Insurance Required. Licensed Hospitality Businesses are required to carry general liability insurance. If a Licensed Hospitality Business has not obtained general liability insurance at the time of its initial license application, it must obtain general liability insurance prior to submitting the Licensee's first renewal application.

D. Responsible Vendor Training Required. All Controlling Beneficial Owners and employees of a Licensed Hospitality Business shall have a valid responsible vendor designation as required in section 44-10-609, C.R.S., and described in the 3-500 Series Rules.

E. No Visible Consumption of Regulated Marijuana. A Licensed Hospitality Business shall ensure that the display and consumption of any marijuana is not visible from outside of its Licensed Premises. The requirement in this paragraph (E) also applies to Licensed Hospitality Businesses that operate in an isolated portion of a Retail Food Establishment. *See* Rule 6-915 – Licensed Hospitality Businesses: Operation Within A Retail Food Establishment.

1. Outdoor Consumption Areas Permitted. A Licensed Hospitality Business may have a Consumption Area outdoors under the following conditions:

a. The Licensed Hospitality Business shall ensure that all marijuana is kept out of plain sight and is not visible from a public place without the use of optical aids, such as telescopes or binoculars, or aircraft; and

b. The Licensed Hospitality Business shall ensure that the Consumption Area is surrounded by a sight-obscuring wall, fence, hedge, or other opaque or translucent barrier.

F. Required Signage.

1. Identification of Consumption Area. A Licensed Hospitality Business shall ensure all areas ingress and egress to the Consumption Area(s) be clearly identified by the posting of a sign which shall not be less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Consumption Area – No One Under 21 Years of Age Allowed."

2. Required Warning. Licensed Hospitality Businesses must post, at all times and in a prominent place inside the Consumption Area, a warning that is at minimum twelve inches high and twelve inches wide that reads as follows:

"Must be 21 or older to enter

Marijuana may only be consumed in designated areas out of public view

No consumption of alcohol or tobacco products on site

We reserve the right to refuse entry or service for reasons including visible intoxication

It is against the law to drive while impaired by marijuana"

G. Entry By A Person Under 21 Years Prohibited. A Licensed Hospitality Business shall not allow any individual under 21 years of age to enter its Licensed Premises. A Licensed Hospitality Business shall verify that every individual entering the Licensed Premises has a valid government-issued photo identification showing that the individual is 21 years of age or older. *See* Rule 3-405 – Acceptable Forms of Identification.

H. Customers in Consumption Area. The Consumption Area must be reasonably monitored ~~supervised~~ by a Licensee at all times when consumers are present to ensure that only persons who are 21 years of age or older are permitted to enter. A Licensed Hospitality Business shall reasonably monitor consumers in the Consumption Area to ensure compliance with these 6-900 Series Rules.

I. Conduct on the Licensed Premises.

1. Consumption By Intoxicated Patrons Prohibited. A Licensed Hospitality Business shall not permit the use or consumption of marijuana by any person displaying any visible signs of intoxication.

2. Alcohol Consumption Prohibited. No consumption of alcohol is permitted in a Licensed Hospitality Business. A Licensed Hospitality Business is responsible for preventing the consumption of alcohol within its Licensed Premises.

3. Tobacco Consumption Prohibited. No smoking of tobacco or tobacco products is permitted in a Licensed Hospitality Business. A Licensed Hospitality Business is responsible for preventing the smoking of tobacco and tobacco products within its Licensed Premises.

4. Employee Consumption Prohibited. No employee of a Licensed Hospitality Business who is on duty may use or consume marijuana. A Licensed Hospitality Business is

responsible for preventing the use or consumption of marijuana by on-duty employees within its Licensed Premises.

5. Flammable Instrument Restrictions. A Licensed Hospitality Business shall not allow the use of the following devices in the Licensed Premises if prohibited by a local ordinance or resolution:

   a. Any device using liquid petroleum gas;

   b. A butane torch;

   c. A butane lighter; or

   d. Matches.

6. Orderliness. A Licensed Hospitality Business shall operate the business in a decent, orderly, and respectable manner. A Licensed Hospitality Business shall not knowingly permit any activity or acts of disorderly conduct as defined by and provided for in section 18-9-106, C.R.S., nor shall a Licensed Hospitality Business permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the Licensed Hospitality Business is located.

J. Free Marijuana Prohibited. A Licensed Hospitality Business may not give away marijuana to a consumer for any reason.

K. Food Products Permitted. A Licensed Hospitality Business is permitted to sell or give away consumable products that do not contain marijuana under the following circumstances:

1. The Licensed Hospitality Business operates in an isolated portion of a Retail Food Establishment;

2. A Licensed Hospitality Business that is not a Retail Food Establishment may prepare and serve hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling; or

3. A Licensed Hospitality Business that is not a Retail Food Establishment may sell or give away nonpotentially hazardous prepackaged food and commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package.

L. Emergency Entry by Public Safety Personnel. If an emergency requires law enforcement, firefighters, emergency medical service providers, or other public safety personnel to enter the Licensed Premises of a Licensed Hospitality Business, the Licensed Hospitality Business is responsible for ensuring that all consumption and other activities, including sales, if applicable, cease until such personnel have completed their investigation or services and have left the Licensed Premises.

M. Criminal Activity Reporting Requirements. In addition to other reporting requirements set forth in these Rules, a Licensed Hospitality Business must report directly to the Division any criminal activity requiring an in-person response from law enforcement. Any report required under this Rule must be submitted within 48 hours after an Owner Licensee or Employee Licensee of the Licensed Hospitality Business learns of the event.

N. Removal of Persons from the Licensed Premises. A Licensed Hospitality Business may remove a person from the Licensed Premises for any reason, including but not limited to, any consumer showing any visible signs of intoxication. Licensees should ensure the consumer has access to safe transportation.

O. Control and Disposal of Marijuana Left by a Consumer. A Licensed Hospitality Business is responsible for the collection and disposal of any marijuana left on the Licensed Premises by a consumer. When a consumer leaves any marijuana on the Licensed Premises, a Licensed Hospitality Business must promptly collect and remove the marijuana from the Restricted Access Area or Consumption Area and either immediately destroy or store and secure the marijuana in a Limited Access Area or an area inaccessible to consumers in accordance with Rule 6-920(A).

1. Marijuana Consumer Waste. In conjunction with the collecting and securing of any remaining marijuana, a Licensed Hospitality Business may segregate any Marijuana Consumer Waste in order to Transfer the Marijuana Consumer Waste for purposes of recycling in accordance with Rule 3-240 – Collection of Marijuana Consumer Waste.

2. Destruction Required. At, or before, the end of each business day, a Licensed Hospitality Business shall destroy any marijuana left on its Licensed Premises by a consumer in conformance with Rule 3-230 – Waste Disposal. The Licensed Hospitality Business shall document any destruction of Regulated Marijuana in a waste log. *See* Rule 3-905 – Business Records Required.

P. Consumer Education Materials. A Licensed Hospitality Business must provide Consumer Education Materials regarding the safe consumption of marijuana. Consumer Education Materials may be made available in print or digital form, may never make claims regarding health or physical benefits of marijuana, and must be prominently displayed. Consumer Education Materials shall at a minimum include the following statement:

> **"WARNING**: Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.
>
> Create a transportation plan ahead of time. Don't operate a vehicle impaired.
>
> Impairing effects of marijuana may be delayed."

Basis and Purpose – 6-910

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish additional health and safety regulations for Licensed Hospitality Businesses.

6-910 – Licensed Hospitality Businesses: Additional Health and Safety Regulations

A. Local Safety Requirements and Inspections. A Licensed Hospitality Business must comply with any safety requirements or required inspections imposed by the Local Jurisdiction's ordinance or resolution which authorizes the Licensed Hospitality Business's operation.

B. Sanitation of Consumption Equipment. If a Licensed Hospitality Business provides consumers with reusable equipment or devices to aid in the use or consumption of marijuana, the Licensed Hospitality Business shall ensure the equipment or device is sanitized properly. A Licensed Hospitality Business shall maintain standard operating procedures regarding reusable equipment and device sanitation practices. Failure to maintain records and/or sanitize reusable equipment may constitute a license violation affecting public safety.

Basis and Purpose – 6-915

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish requirements for Licensed Hospitality Businesses operating within a Retail Food Establishment or on the Licensed Premises of any establishment with a license issued pursuant to articles 3, 4, or 5 of Title 44.

6-915 – Licensed Hospitality Businesses: Operation Within a Retail Food Establishment

A. Alcohol Beverage License Prohibited. A Licensed Hospitality Business shall not operate within a Retail Food Establishment that holds a license or permit issued pursuant to article 3, 4, or 5 of title 44.

1. The Licensed Premises of a Licensed Hospitality Business must be completely separate from, and shall not overlap with, the licensed premises of any license issued pursuant to articles 3, 4, or 5 of Title 44. To be considered completely separate:

a. The Licensed Premises of a Licensed Hospitality Business shall not overlap with or share any physical space with, at any time, the licensed premises of a license issued pursuant to articles 3, 4, or 5 of Title 44. Alternating use of the same location at different times by a license issued pursuant to article 10 of Title 44 and a license or permit issued pursuant to article 3, 4, or 5 of Title 44 is prohibited.

b. The Licensed Premises of a Licensed Hospitality Business may be adjacent to the licensed premises of any license issued pursuant to article 3, 4, or 5 of Title 44, so long as all of the following conditions are met:

i. Each has a separate address, which may be separate units within a street address so long as each unit has separate entrances and exits from the other, and consumers may not pass through the licensed premises of one to reach the licensed premises of the other;

ii. There is no door, hallway, or passageway by or through which a consumer may pass between the Licensed Premises of a Licensed Hospitality Business and the adjacent licensed premises of any license issued pursuant to articles 3, 4, or 5 of Title 44; and

iii. Any window on a shared wall is covered, or rendered opaque or translucent, to ensure the display or consumption of marijuana within a Licensed Hospitality Business is not visible to any person outside the Licensed Premises, including by a person within the adjacent licensed premises of a license issued pursuant to articles 3, 4, or 5 of Title 44.

B. Isolation From Unlicensed Portions of the Retail Food Establishment. A Licensed Hospitality Business that operates within a Retail Food Establishment shall ensure that its Licensed Premises are isolated from the rest of the Retail Food Establishment.

1. Consumers may enter the Licensed Premises from the unlicensed portion of the Retail Food Establishment. However, in order to be isolated from the rest of the Retail Food Establishment, the Licensed Premises shall:

a. Not overlap with the operations of the Retail Food Establishment; and

b. Be separated by a sight-obscuring wall, or other opaque or translucent barrier, and a secure door to ensure only consumers 21 years of age or older are permitted into the Licensed Premises.

2. Segregation of Marijuana. A Licensed Hospitality Business shall not store marijuana—either for purposes of sale or destruction—in any location containing other inventory of the Retail Food Establishment.

C. Manufacturing of Regulated Marijuana Products Prohibited. A Licensed Hospitality Business shall ensure that the Retail Food Establishment is not used to manufacture Regulated Marijuana Products or to add marijuana to foods produced or provided at the Retail Food Establishment.

D. Food Service Permitted. Nothing in this Rule 6-915 prohibits employees of the Retail Food Establishment from taking orders for, or serving, foods, produced or provided at the Retail Food Establishment within the Licensed Premises of the Licensed Hospitality Business. Any employee of the Retail Food Establishment who has unescorted access to the Limited Access Area or Restricted Access Area of a Licensed Hospitality Business, or who may handle marijuana for destruction, or any other purpose, shall first obtain an Employee License and Identification Badge.

Basis and Purpose – 6-920

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), and 44-10-610, C.R.S. The purpose of this rule is to establish requirements for the display of Retail Marijuana on the Licensed Premises of a Retail Marijuana Hospitality and Sales Business, and to establish that a Retail Marijuana Hospitality and Sales Business must control and safeguard access to certain areas where Retail Marijuana will be sold.

6-920 – Retail Marijuana Hospitality and Sales Businesses Point of Sale: Restricted Access Area

A. Display of Retail Marijuana. The display of Retail Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the consumer must be supervised by the Owner Licensee or Employee Licensees at all times when consumers are present.

Basis and Purpose – 6-925

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(1)(k), 44-10-203(2)(v), 44-10-203(2)(z), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to clarify additional license privileges and restrictions for Retail Marijuana Hospitality and Sales Businesses that do not apply to Marijuana Hospitality Businesses.

Please Note: *The following proposed rule revisions are in response to feedback from applicants, licensees, and other interested parties who see barriers in the existing rules that create challenges for Licensed Hospitality Businesses to establish or maintain operations. These revisions are intended to adjust certain restrictions on Licensed Hospitality Businesses with an eye towards operability and transparency. The Division is continuing to consider how these potential revisions would impact public health and safety. We are seeking thoughtful feedback on any risks that may be introduced, as well as perceived benefits to fully understand the potential impacts of these changes. The below proposed revisions include considerations regarding sales limitations and automated dispensing machines.*

6-925 – Retail Marijuana Hospitality and Sales Businesses: Additional License Privileges and Restrictions

A. Authorized Sources of Retail Marijuana. A Retail Marijuana Hospitality and Sales Business may only Transfer Retail Marijuana that it obtained from another Retail Marijuana Business.

B. Restriction on Transfers to Consumers. A Retail Marijuana Hospitality and Sales Business and its employees are prohibited from Transferring Retail Marijuana to a consumer if the Retail Marijuana Hospitality and Sales Business' employee knows or reasonably should know that the consumer does not intend to consume at least a portion of the Transferred Retail Marijuana on the Licensed Premises of the Retail Marijuana Hospitality and Sales Business or previously during the same business day the consumer already received the relevant quantity limitation in this Rule. In determining the imposition of any penalty for violation of this Rule 6-925, the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235.

C. Inventory Tracking System Requirements. A Retail Marijuana Hospitality and Sales Business must use the Inventory Tracking System in accordance with the requirements of the 3-800 Series Rules.

D. Samples Provided for Testing. A Retail Marijuana Hospitality and Sales Business may provide Samples of Retail Marijuana for testing purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Hospitality and Sales Business shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

E. Authorized On-Premises Storage. A Retail Marijuana Hospitality and Sales Business may store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules. *See* Rule 3-800 Series Rules – Regulated Marijuana Business: Inventory Tracking System.

F. Authorized Marijuana Transport. A Retail Marijuana Hospitality and Sales Business is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where the transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Hospitality and Sales Business from transporting its own Retail Marijuana to the Licensed Premises of its Retail Marijuana Hospitality and Sales Business.

G. All Transfers of Retail Marijuana by a Retail Marijuana Hospitality and Sales Business to a consumer shall not exceed the following sales limits in a single day:

a. More than one ounce of Retail Marijuana flower;

b. More than eight grams of Retail Marijuana Concentrate;

c. A Retail Marijuana Product intended for oral consumption containing more than 100 milligrams of active THC. For any Transfer of Retail Marijuana Product containing more than 10 milligrams of active THC, the Retail Marijuana Product must be Transferred to a consumer in separate serving sizes containing no more than 10 milligrams of active THC per serving; or

d. A Retail Marijuana Product that is a non-edible and non-psychoactive, such as a skin and body product, is exempt from the daily sales limit in subparagraph (G)(1)(c) of this Rule.

2. Consumers are limited to one transaction per day of no more than the sales limit set forth in subparagraph (G)(1). A transaction may consist of multiple Transfers of Retail Marijuana within a single visit to a Retail Marijuana Hospitality and Sales Business. The

transaction occurs when the consumer completes their purchase and remits payment to the Retail Marijuana Hospitality and Sales Business.

a. Retail Marijuana Hospitality and Sales Business may not make multiple Transfers of Retail Marijuana to the same consumer during separate visits in the same day.

b. Each Transfer must be entered in the Inventory Tracking System pursuant Rule 3-805(E)(1).

3. Sales limits shall apply on an individual basis per consumer.

a. A Retail Marijuana Hospitality and Sales Business establishment shall identify an individual consumer for each Transfer and apply the amount of Retail Marijuana ordered and Transferred to that individual's sales limit.

b. A Retail Hospitality and Sales Business shall include in their Standard Operating Procedures how Employee Licensees will monitor daily sales limits, and ensure all consumers have a transportation plan to leave the Licensed Premises safely.

H. Measurement Procedures and Equipment.

1. A Retail Marijuana Hospitality and Sales Business shall develop and maintain standard operating procedures, and any additional equipment necessary, to ensure any Retail Marijuana Product Transferred to a consumer does not exceed the ~~quantity~~ sales limitation and provisions for sharing of Retail Marijuana set forth in subparagraph G(3).

2. A Retail Marijuana Hospitality and Sales Business Transferring Multiple-Serving Edible Retail Marijuana Product or Multiple-Serving Liquid Edible Retail Marijuana Product to a consumer shall provide a measurement device necessary for the consumer to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of active THC per serving.

I. Packaging and Labeling.

1. Packaging and Labeling Not Required at Time of Transfer. A Retail Marijuana Hospitality and Sales Business may Transfer Retail Marijuana to a consumer without packaging and labeling so long as the Retail Marijuana Hospitality and Sales Business complies with the requirements of Rule 3-1020. *See* Rule 3-1020 – Packaging and Labeling: Requirements Prior to Transfer to a Consumer at a Retail Marijuana Hospitality and Sales Business.

2. Packaging and Labeling Required Before Retail Marijuana Removed from Licensed Premises. A Retail Marijuana Hospitality and Sales Business shall not permit a consumer to leave the Licensed Premises with any unconsumed marijuana unless the Retail Marijuana Hospitality and Sales Business has ensured unconsumed marijuana is packaged and labeled in accordance with the requirements of Rule 3-1020. *See* Rule 3-1020 – Packaging and Labeling: Requirements Prior to Transfer to a Consumer at a Retail Marijuana Hospitality and Sales Business.

J. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a consumer.

Please Note: *The following proposed revision is based on a stakeholder comment. The Division is evaluating whether the Marijuana Code authorizes the State Licensing Authority to allow a Retail*

Marijuana Hospitality & Sales Business to utilize a vending machine in the Restricted Access Area. The Division appreciates any feedback related to this proposed revision and the proposed requirements.

I. Automated Dispensing Machines. A Retail Marijuana Hospitality and Sales Business may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

Basis and Purpose – 6-926

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to clarify additional license privileges and restrictions for Retail Marijuana Hospitality and Sales Businesses that are specific to Spa Business types.

Please Note: *The following proposed new rule is in response to feedback from applicants, licensees, and other interested parties who see barriers in the existing rules that create challenges for Licensed Hospitality Businesses to establish or maintain operations. These revisions are intended to adjust certain restrictions on Licensed Hospitality Businesses with an eye towards operability and transparency. The Division is continuing to consider how these potential revisions would impact public health and safety. We are seeking thoughtful feedback on any risks that may be introduced, as well as perceived benefits to fully understand the potential impacts of these changes.*

6-926 – Licensed Marijuana Hospitality Businesses: Spa Businesses

A. All privileges, restrictions on, and requirements of Licensed Marijuana Hospitality Businesses apply in addition to the requirements below.

B. Massage Therapist. A massage therapist employed by a Licensed Marijuana Hospitality Business must also be licensed pursuant to 12-235-101 et seq., C.R.S., and rules promulgated therewith, including 3 CCR 722-1.

C. Employee Consumption Prohibited. A Licensed Marijuana Hospitality Business must have standard operating procedures that include protocols Employee Licensees must follow when providing massage services to prevent against employees consuming Regulated Marijuana on the Licensed Premises.

D. Consumption Area for Massage Services. The massage therapist may only apply topical Retail Marijuana Product in a Consumption Area of a Licensed Hospitality Business. No other consumption of Regulated Marijuana is permitted in a Consumption Area for massage services, other than the application of topical Regulated Marijuana Product by the massage therapist to the consumer. The Consumption Area of a spa business where a consumer receives massage

services shall not overlap with the Restricted Access Area and is not required to be under video surveillance, except all points of ingress and egress into the Consumption Area must be under video surveillance.

E. Misconduct Reporting. A Licensed Hospitality Business must notify the Division of any misconduct conducted by its employees, including reports of misconduct to the Colorado Department of Regulatory Agency.

F. Daily Sales Limits. A Hospitality and Sales Business must comply with sales limits in 6-925 (G)

Basis and Purpose – 6-930

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish general limitations and prohibited acts for Retail Marijuana Hospitality and Sales Businesses.

6-930 – Retail Marijuana Hospitality and Sales Businesses: General Limitations and Prohibited Acts

A. Age Verification. Prior to Initiating the Transfer of Retail Marijuana a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older. *See* Rule 3-405 – Acceptable Forms of Identification.

B. Purchases Only Within Restricted Access Area. A consumer must be physically present within the Restricted Access Area of the Retail Marijuana Hospitality and Sales Business's Licensed Premises to purchase Retail Marijuana. ~~The consumer must consume or use the Retail Marijuana purchased in the Retail Marijuana Hospitality and Sales Business in that Businesses' Restricted Access Area.~~

1. Application to Retail Marijuana Hospitality and Sales Businesses Operating in a Retail Food Establishment. The requirement of paragraph (B) also applies to all Retail Marijuana Hospitality and Sales Businesses operating in an isolated portion of the Retail Food Establishment. All Transfers of Retail Marijuana may occur only in the Retail Marijuana Hospitality and Sales Business' Restricted Access Area, and not in any other area of the Retail Food Establishment.

2. Application to Retail Marijuana Hospitality and Sales Businesses operating as Spa Business. A Licensed Massage Therapist may apply Retail Marijuana Product in a Consumption Area of the Retail Marijuana Hospitality and Sales Business.

C. Prohibited Sales and Activity.

1. Sales to Persons Under 21 Years. A Retail Marijuana Hospitality and Sales Business is prohibited from Transferring, giving, or distributing Regulated Marijuana to persons under 21 years of age.

2. Alternative Use Products. A Retail Marijuana Hospitality and Sales Business shall not Transfer, or permit the use or consumption of, any Alternative Use Product.

3. Marijuana Not Transferred by the Retail Marijuana Hospitality and Sales Business. A Retail Marijuana Hospitality and Sales Business shall not permit the purchase, use or consumption of any marijuana other than the Retail Marijuana it Transfers pursuant to these rules.

4. Nicotine or Alcohol. A Retail Marijuana Hospitality and Sales Business is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of alcohol would require a license pursuant to articles 3, 4, or 5 of Title 44, C.R.S.

5. Transfer of Expired Product. A Retail Marijuana Hospitality and Sales Business shall not Transfer any expired Retail Marijuana Product to a consumer.

6. Transporter Transfer Restrictions. A Retail Marijuana Hospitality and Sales Business shall not Transfer Retail Marijuana to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana from a Retail Marijuana Transporter.

7. Possession and Transfer of Sampling Units. A Retail Marijuana Hospitality and Sales Business may not possess or Transfer Sampling Units.

8. Research Transfers. A Retail Marijuana Hospitality and Sales Business shall not Transfer any Retail Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

D. Storage and Display Limitations.

1. A Retail Marijuana Hospitality and Sales Business shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Area or Restricted Access Area.

2. Any product displays that are readily accessible to the customer must be supervised by the Owner Licensee or Employee Licensee at all times when consumers are present.

E. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

F. Adverse Health Event Reporting. A Retail Hospitality and Sales Business must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-935

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish Limited Access Area and security exemptions and requirements for Marijuana Hospitality Businesses.

6-935 – Marijuana Hospitality Business: Limited Access Areas and Security Standards

A. Limited Access Area Permitted But Not Required. A Marijuana Hospitality Business is not required to maintain a Limited Access Area as part of the Licensed Premises so long as the Marijuana Hospitality Business demonstrates the following:

1. It has established policies, procedures, and methods to ensure marijuana collected pursuant to Rule 6-905(O) will be secured in an area inaccessible to patrons of the Marijuana Hospitality Business prior to destruction; and

2. Its surveillance recording equipment is housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division, and the relevant Local Licensing Authority or Local Jurisdiction, state or local law enforcement agencies for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, and service personnel or contractors.

B. Security Standards. A Marijuana Hospitality Business shall comply with Rule 3-220 Security Alarm Systems and Lock Standards and Rule 3-225 Video Surveillance, except that its Licensed Premises need only be monitored when consumers are on the Licensed Premises or during periods when marijuana collected pursuant to Rule 6-905(O) remains on the Licensed Premises prior to destruction.

Basis and Purpose – 6-940

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), and 44-10-609, C.R.S. The purpose of this rule is to establish requirements for Marijuana Hospitality Businesses with a Mobile Premises.

6-940 – Marijuana Hospitality Business: Requirements for Mobile Premises

A. Separate License Required for Each Mobile Premises. Each Mobile Premises requires a separate Marijuana Hospitality Business License.

B. Consumption Area of the Mobile Premises. The Consumption Area of the Mobile Premises shall exclude the area designed to seat the driver and front seat passenger.

C. Requirements for Motor Vehicles Designated as Mobile Premises. A Marijuana Hospitality Business must ensure that the motor vehicle serving as the Mobile Premises of a Marijuana Hospitality Business complies with all state and local registration and permitting requirements. At each initial and renewal application, a Marijuana Hospitality Business must provide the Division with the following information regarding its Mobile Premises:

a. Documentation that the Mobile Premises is owned or leased by the Marijuana Hospitality Business;

b. The vehicle manufacturer/make, model, and model year associated with the Mobile Premises;

c. The vehicle identification number (VIN) associated with the Mobile Premises;

d. The Colorado license plate number and copy of the registration associated with the Mobile Premises;

e. If applicable, the automatic vehicle identification tag associated with the Mobile Premises; and

f. A copy of a valid permit issued by the Public Utilities Commission to the Marijuana Hospitality Business.

D. Local Approval Required. A Marijuana Hospitality Business with a Mobile Premises may only operate in Local Jurisdictions that have an ordinance or resolution authorizing the operation of Mobile Premises and for which it holds any required valid local license(s). A Mobile Premises' operation includes, but is not limited to, allowing passengers to consume marijuana and boarding or disembarking the Mobile Premises.

E. Additional Requirements for Mobile Premises. Before receiving a License for a Mobile Premises, a Marijuana Hospitality Business must establish that the Mobile Premises will be able to meet the following requirements:

1. Global position system tracking of the Mobile Premises;

2. Written standard operating procedures that address the logging of the route(s) of each Mobile Premises;

3. Video surveillance inside of the Mobile Premises, including the entry and exit points to the Mobile Premises and driver's area of the vehicle;

4. Proper ventilation within the vehicle, which includes, if marijuana is smoked or vaped in the Licensed Premises, that air is not circulated into the driver's area of the Licensed Premises;

5. Policies and procedures to ensure that no marijuana is possessed or consumed in the area designed to seat the driver and front seat passenger in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

6. Methods to ensure consumption activity is not visible outside the vehicle;

7. Policies, procedures or other measures to ensure that consumers are prohibited from entering the driver's area of the Mobile Premises; and

8. Display of the Marijuana Hospitality Business license on the dashboard of the Mobile Premises.

F. Separate Place of Business. A Marijuana Hospitality Business with a Mobile Premises shall designate and maintain a fixed place of business in Colorado that is separate from the Mobile Premises. The fixed place of business does not need to be a Licensed Premises. However, if the Marijuana Hospitality Business will transport any marijuana to the separate place of business for purposes of destruction, the separate place of business shall also be a Licensed Premises and is subject to any applicable state and local licensing requirements or restrictions.

1. Shared Places of Business. Multiple Marijuana Hospitality Business Licensees with Mobile Premises may share a single separate place of business so long as the Marijuana Hospitality Businesses are identically owned.

2. Shared Premises with Another Licensed Hospitality Business. A Marijuana Hospitality Business with a Mobile Premises may designate the location of another Marijuana Hospitality Business's Licensed Premises as its separate place of business subject to the following conditions:

a. The relevant Local Licensing Authority or Local Jurisdiction permit a Marijuana Hospitality Business with a Mobile Premises to designate the location of another Marijuana Hospitality Business's Licensed Premises as its separate place of business;

b. The Marijuana Hospitality Businesses are identically owned; and

c. Record-keeping shall enable the Division and the Local Licensing Authority or Local Jurisdiction to distinguish clearly the business transactions and operations of each Marijuana Hospitality Business.

G. Business Records. All records required to be maintained by these rules must be maintained at the Marijuana Hospitality Business's separate place of business, and not at the Mobile Premises, except that when the Mobile Premises is in operation it must maintain its current route log on the Mobile Premises.

1. A Marijuana Hospitality Business is not required to maintain records related to inventory tracking because a Marijuana Hospitality Business is prohibited from engaging in Transfers of marijuana.

H. Health and Safety Requirements. A Marijuana Hospitality Business' Mobile Premises shall comply with all relevant requirements in the 3-300 Series Rules. Hand-washing facilities, however, need not be in the Mobile Premises, but may be located in the Marijuana Hospitality Business's separate place of business.

I. Operating Restrictions. A Marijuana Hospitality Business shall ensure that its Mobile Premises does not operate outside of the state of Colorado.

J. Change of Mobile Premises. A Marijuana Hospitality Business may change its Mobile Premises in accordance with the change of Mobile Premises application requirements in Rule 2-260(D).

6-1100 Series – Accelerator Store Licenses

Basis and Purpose – 6-1105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-203(2)(dd), 44-10-401(2)(b)(I), 44-10-601, 44-10-605, and 44-10-611, C.R.S. The purpose of this rule is to establish the license privileges of an Accelerator Store.

Please Note: *The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.*

6-1105 – Accelerator Store: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Store may operate on the same Licensed Premises as a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Store may operate on a separate premises in the possession of a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Business– Shared Licensed Premises and Operational Separation, an Accelerator Store may share, and operate at, the same Licensed Premises as an Accelerator-Endorsed Licensee's Retail Marijuana Store that shares a Licensed Premises with a Medical Marijuana Store.

B. Authorized Sources of Retail Marijuana. An Accelerator Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

C. Samples Provided for Testing. An Accelerator Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Accelerator Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

D. Authorized On-Premises Storage. An Accelerator Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited

Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

E. Authorized Marijuana Transport. An Accelerator Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents an Accelerator Store from transporting its own Retail Marijuana.

F. Performance-Based Incentives. An Accelerator Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

G. Authorized Transfers of ~~Industrial~~ Hemp Products. An Accelerator Store may Transfer ~~Industrial~~ Hemp Product to a consumer only after it has confirmed:

1. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

2. That the Person Transferring the ~~Industrial~~ Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

H. Automated Vending Machine. An Accelerator Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

I. Walk-up Window or Drive-up Window. An Accelerator Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this rule.

1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, an Accelerator Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the

consumer's identification and ensure that the consumer is 21 years of age or older.

b. The Accelerator Store may accept telephone orders or may accept orders from the customer at the walk-up window or drive-up window. ~~Accelerator Stores may not accept orders or payment for Retail Marijuana over the internet.~~

c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Accelerator Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods, including online payments, are permitted ~~for payments~~ for Retail Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Accelerator Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. An Accelerator Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

J. Sales over the Internet. An Accelerator Store may accept orders and payment for Retail Marijuana over the internet.

1. Online Order Requirements.

a. Online orders must include the customer's name and date of birth.

b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:

i. A digital copy of the pregnancy warning required in Rule 6-1115; and

ii. If accepting an order for Retail Marijuana Concentrate, the Accelerator Store must also provide the educational resource required in Rule 6-1110(C.5).

2. Transfer of Retail Marijuana to a customer.

a. A customer must be physically present on the Licensed Premises to take possession of Retail Marijuana.

b. The Accelerator Store must verify the customer's physical identification matches the name and date of birth the customer provided at the time of the order, and verify that the customer is twenty-one years of age or older, in accordance with these Rules.

Basis and Purpose – 6-1110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-401(2)(b)(I), 44-10-601, 44-10-611, 44-10-701(1)(a), and 44-10-701(3)(d) and (f), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by an Accelerator Store. Such limitations include, but are not limited to, quantity limitations on sales and equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Accelerator Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

***Please Note:** The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.*

6-1110 – Accelerator Store: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.

B. Age Verification. Prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. An Accelerator Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product or more than six Retail Marijuana seeds in a single transaction to a consumer. A single transaction includes multiple Transfers to the same consumer during the same business day where the Accelerator Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-1110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:

a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, an Accelerator Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.

E. ~~Sales over the Internet. Only an Accelerator Store holding a valid delivery permit taking orders for delivery may make sales over the internet. Only a Retail Marijuana Store holding a valid delivery permit and/or a Retail Marijuana Transporter holding a valid delivery permit may deliver Retail Marijuana to a private residence. All other Retail Marijuana Store and Retail Marijuana Transporter Licensees are prohibited from selling Retail Marijuana over the internet.~~ Repealed.

~~F.~~ Delivery Outside Colorado Prohibited. An Accelerator Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.

G. Prohibited Items. An Accelerator Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or a~~n Industrial~~ Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

H. Free Product Prohibited. An Accelerator Store may not give away Retail Marijuana to a consumer for any reason.

I. Nicotine or Alcohol Prohibited. An Accelerator Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 3, 4, or 5 of Title 44, C.R.S.

J. Storage and Display Limitations.

1. An Accelerator Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in an Accelerator Store must include the potency of the concentrate on a sign next to the name of the product.

   a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

   b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

K. Transfer of Expired Product Prohibited. An Accelerator Store shall not Transfer any expired Retail Marijuana Product to a consumer.

L. Transfer Restriction.

1. Sampling Units. An Accelerator Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. An Accelerator Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

L.5. Standard Operating Procedures. An Accelerator Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. An Accelerator Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

   a. The distinct shape of a human, animal, or fruit; or

   b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

N. Adverse Health Event Reporting. An Accelerator Store must report Adverse Health Events pursuant to Rule 3-920.

O. Corrective and Preventive Action. An Accelerator Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-1115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(z), 44-10-203(2)(aa), 44-10-202(3)(h), 44-10-401(2)(b)(I), and 44-10-611, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to establish that an Accelerator Store must control and safeguard access to certain areas where Retail Marijuana and Retail Marijuana Product will be sold to the general public and prevent the diversion of Retail Marijuana and Retail Marijuana Product to people under 21 years of age.

6-1115 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Retail Marijuana are sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, “Restricted Access Area – No One Under 21 Years of Age Allowed.”

B. Consumers in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times when consumers are present to ensure that only persons who are 21 years of age or older are permitted to enter. When allowing a customer access to a Restricted Access Area, Owner Licensees and Employee Licensees shall make reasonable efforts to limit the number of consumers in relation to the number of Owners Licensees and Employee Licensees in the Restricted Access Area at any time.

C. Display of Retail Marijuana. The display of Retail Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the consumer must be supervised by the Owner Licensee or Employee Licensees at all times when consumers are present.

D. Pregnancy Warning. Accelerator Stores must post, at all times and in a prominent place inside the Restricted Access Area, a warning that is at minimum three inches high and six inches wide that reads:

> **WARNING:** Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.

Part 7 – Regulated Marijuana Transfers to Unlicensed Pesticide Manufacturers

7-105 – Medical Marijuana Transfers to Medical Research Facilities – **Repealed effective January 1, 2021.**

7-110 – Retail Marijuana Transfers to Medical Research Facilities – **Repealed effective January 1, 2021.**

Basis and Purpose – 7-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a)(II), 44-10-202(1)(c), 44-10-203(1)(c), and 44-10-203(1)(k), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Regulated Marijuana and Regulated Marijuana Product to Pesticide Manufacturers, including requirements for the possession and disposition of Regulated Marijuana and Regulated Marijuana Products by Pesticide Manufacturers. This Rule 7-115 was previously Rules M and R 1802, 1 CCR 212-1 and 1 CCR 212-2.

7-115 – Pesticide Manufacturers

A. Transfers to Pesticide Manufacturers. A Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Cultivation Facility, and Retail Marijuana Products Manufacturer may Transfer Regulated Marijuana to a Pesticide Manufacturer solely for the purpose of conducting research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Regulated Marijuana. *See* Rules 5-205, 5-305, 6-205, 6-305.

B. Written Documentation Required. A Licensee shall require, and shall not Transfer Regulated Marijuana prior to receiving, written proof under oath, as evidenced by an affidavit entered into by an authorized person on behalf of the Pesticide Manufacturer, affirming that the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this Rule. This documentation shall constitute a business record under Rule 3-905 – Business Records Required.

C. Agreement with Pesticide Manufacturer. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer that Transfers Regulated Marijuana to a Pesticide Manufacturer shall enter into a written agreement with the Pesticide Manufacturer prior to Transferring any Regulated Marijuana to the Pesticide Manufacturer. The written agreement, which shall constitute a business record under Rule 3-905, shall include:

1. The identity of the Pesticide Manufacturer;

2. The quantity of Regulated Marijuana that will be Transferred to the Pesticide Manufacturer;

3. The date(s) upon which Transfer of the Regulated Marijuana will occur;

4. An affirmation by the Pesticide Manufacturer that it:

   i. Has an establishment number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*;

   ii. Is authorized to do business in Colorado;

iii. Is in possession of a physical location in the State of Colorado where its research activities will occur;

iv. Has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.;

v. Remains authorized to receive the quantity of Regulated Marijuana that will be Transferred to the Pesticide Manufacturer; and

vi. Will only use the Transferred Regulated Marijuana for the purpose of research to establish safe and effective protocols for the use of Pesticides on Regulated Marijuana, which protocols may include but not be limited to establishing efficacy and toxicity; and

5. An affirmation by the Licensee that it has received written proof the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this Rule.

D. Inventory Tracking Requirements. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, and Retail Marijuana Products Manufacturer shall track all Regulated Marijuana in the Inventory Tracking System until it is delivered to a Pesticide Manufacturer.

1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Regulated Marijuana unless a manifest is generated from the Inventory Tracking System.

2. Complete Manifest. A Licensee shall not relinquish possession or control of Regulated Marijuana to a Pesticide Manufacturer until a natural person authorized by the Pesticide Manufacturer acknowledges receipt of the Regulated Marijuana by signing the transport manifest.

3. No Inventory Tracking Following Delivery. Once Regulated Marijuana has been Transferred by a Licensee to a Pesticide Manufacturer, no further inventory tracking is required.

4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of all Regulated Marijuana in the Inventory Tracking System.

E. Packaging, Labeling, and Testing. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer that Transfers Regulated Marijuana to a Pesticide Manufacturer shall package, label, and test all Regulated Marijuana in conformance with these rules prior to Transferring the Regulated Marijuana. *See* – Labeling, Packaging, and Product Safety; – Regulated Marijuana Testing Program.

F. Business Records. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer that Transfers Regulated Marijuana to a Pesticide Manufacturer shall keep all documents concerning the relationship and Transfer of any Regulated Marijuana in accordance with Rules 3-605 and 3-905.

G. Pesticide Manufacturer Authorized Activities. A Pesticide Manufacturer is only authorized to possess Transferred Regulated Marijuana in order to conduct research to establish safe and

effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Regulated Marijuana.

H. Quantity Limitations for Pesticide Manufacturer. In no event shall a Pesticide Manufacturer possess at any given time more than (i) 12 Medical Marijuana plants and (ii) four pounds of Medical Marijuana or its equivalency in Medical Marijuana Concentrate (512 grams) or Medical Marijuana Product (5,120 Medical Marijuana Products), and (i) 12 Retail Marijuana plants and (ii) four pounds of Retail Marijuana or its equivalency in Retail Marijuana Concentrate (512 grams) or Retail Marijuana Products (5,120 ten-milligram servings of Retail Marijuana Product).

I. Disposition of Transferred Regulated Marijuana. A Pesticide Manufacturer shall destroy all Transferred Regulated Marijuana received from a Licensee following completion of research activities.

1. A Pesticide Manufacturer shall destroy Transferred Regulated Marijuana in conformance with Rule 3-230 – Waste Disposal.

2. A Pesticide Manufacturer shall document the destruction of Transferred Regulated Marijuana, which documentation shall include:

   i. Whether the destroyed material was Transferred Regulated Marijuana;

   ii. The date of destruction;

   iii. The location of the destruction;

   iv. The manner in which the Transferred Regulated Marijuana was rendered unusable and Unrecognizable;

   v. The method of final disposition pursuant to Rule 3-230; and

   vi. The identity(ies) and contact information of all Person(s) involved in the destruction.

3. A Pesticide Manufacturer shall keep all documentation regarding destruction of Transferred Regulated Marijuana for the current year and three preceding calendar years.

J. No Pesticide on Licensed Premises. Under no circumstance may a Pesticide Manufacturer apply Pesticide(s) for research purposes on the Licensed Premises of a Regulated Marijuana Business.

1. Licensees Shall Not Permit Pesticide on Licensed Premises. Under no circumstance may a Licensee allow or permit the application of Pesticide(s) by a Pesticide Manufacturer for research purposes on the Licensed Premises of a Regulated Marijuana Business.

2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.

K. No Human or Animal Subjects. Under no circumstance shall a Pesticide Manufacturer receiving Regulated Marijuana from a Licensee engage in research involving human subjects. Additionally, under no circumstance shall a Pesticide Manufacturer receiving Regulated Marijuana from a Licensee engage in research involving animal subjects, as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g).

1. Licensees Shall Not Permit Human or Animal Subject Research. If a Licensee knows or reasonably should know that a Pesticide Manufacturer intends to engage in or has engaged in marijuana-related research involving human and/or animal subjects, the Licensee shall not Transfer any Regulated Marijuana to the Pesticide Manufacturer.

2. Violation Affecting Public Safety. A violation of this Rule shall be considered a violation affecting public safety.

L. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes any Transferred Regulated Marijuana from a Pesticide Manufacturer.

Part 8 – Enforcement and Discipline

8-100 Series - Enforcement

Basis and Purpose – 8-105

The statutory authority for this rule includes but is not limited to sections 44-10-201(4), 44-10-202(1)(c), 44-10-203(1)(e), 44-10-203(1)(f), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-204, and 44-10-902, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Regulated Marijuana. This Rule 8-105 was previously Rules M and R 1201, 1 CCR 212-1 and 1 CCR 212-2.

8-105 – Duties of Employees of the State Licensing Authority

A. Duties of Director.

1. The State Licensing Authority may delegate an act required to be performed by the State Licensing Authority related to the day-to-day operation of the Division to the Director.

2. The Director may authorize Division employees to perform tasks delegated from the State Licensing Authority.

3. The Director or his or her authorized Division employees may consult with any state or local agency for the purpose of the proper administration of these rules or the Marijuana Code.

B. Duties of Division Investigators. The State Licensing Authority, the Department's Senior Director of Enforcement, the Director, and Division investigators shall have all the powers of any peace officer to:

1. Investigate violations or suspected violations of the Marijuana Code and any rules promulgated pursuant to it. Make arrests, with or without warrant, for any violation of the Marijuana Code, any rules promulgated pursuant to it, Article 18 of Title 18, C.R.S., any other laws or regulations pertaining to Regulated Marijuana in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties pursuant to the Marijuana Code, probable cause exists that a crime related to such laws has been or is being committed;

2. Serve all warrants, summonses, subpoenas, administrative citations, notices or other processes relating to the enforcement of laws regulating Regulated Marijuana;

3. Assist or aid any law enforcement officer in the performance of his or her duties upon such law enforcement officer's request or the request of other local officials having jurisdiction;

4. Inspect, examine, or investigate any premises where the Licensee's Regulated Marijuana is grown, stored, cultivated, manufactured, tested, distributed, or sold, and any books and records in any way connected with any licensed or unlicensed activity;

5. Require any Licensee, upon demand, to permit an inspection of Licensed Premises during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and, to permit the testing of or examination of Regulated Marijuana;

6. Require Applicants to submit complete and current applications and fees and other information the Division deems necessary to make licensing decisions and approve significant changes made by the Applicant or Licensee;

7. Conduct investigations into the character, criminal history, and all other relevant factors related to suitability of all Applicants and Licensees for Regulated Marijuana licenses and such other Persons with a direct or indirect interest in an Applicant or Licensee, as the State Licensing Authority may require; and

8. Exercise any other power or duty authorized by law.

C. Duties of State Licensing Authority and Division Employees.

1. Employees shall maintain the confidentiality of State Licensing Authority and Division records and information. For confidentiality requirements of State Licensing Authority and Division employees who leave the employment of the State Licensing Authority, *see* Rule 8-240 - Confidential Information and Former State Licensing Authority Employees.

2. Pursuant to subsection 44-10-201(3), C.R.S., State Licensing Authority employees with regulatory oversight responsibilities for marijuana businesses licensed by the State Licensing Authority shall not work for, represent, or provide consulting services to or otherwise derive pecuniary gain from a marijuana business licensed by the State Licensing Authority or other business entity established for the primary purpose of providing services to the marijuana industry for a period of six months following his or her last day of employment with the State Licensing Authority.

3. Pursuant to subsection 44-10-201(4), C.R.S., disclosure of confidential records or information in violation of the provisions of the Marijuana Code constitutes a class 1 misdemeanor.

Basis and Purpose – 8-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(f), 44-10-202(1)(g), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-207, 44-10-203(1)(k), and 44-10-902, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Regulated Marijuana. This Rule 8-110 was previously Rules M and R 1202, 1 CCR 212-1 and 1 CCR 212-2.

Please Note: *The following proposed rule revisions are intended to implement HB 23-1021.*

8-110 – Requirement for Inspections and Investigations, Searches, Administrative Holds, Embargos, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

A. Applicants and Licensees Shall Cooperate with Division Employees.

1. Applicants and Licensees must cooperate with employees of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Marijuana Code.

2. No Applicant or Licensee shall by any means interfere with, obstruct, or impede the State Licensing Authority or any employee of the Division from exercising their duties pursuant to the provisions of the Marijuana Code and all rules promulgated pursuant to it. This would include, but is not limited to:

a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigator of the Division, their supervisors, or any peace officers from exercising their duties. The term "threatening force" includes the threat of bodily harm to such individual or to a member of his or her family;

b. Denying investigators of the Division access to premises where the Licensee's Regulated Marijuana are grown, stored, cultivated, manufactured, tested, distributed, or Transferred during business hours or times of apparent activity;

c. Providing false or misleading statements;

d. Providing false or misleading documents and records;

e. Failing to timely produce requested books and records required to be maintained by the Licensee; or

f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.

3. License Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

B. Administrative Hold.

1. Notice of Administrative Hold. To prevent destruction of evidence, diversion, or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation of an alleged violation of the Marijuana Code or Marijuana Rules, a Division investigator may order an administrative hold of Regulated Marijuana pursuant to the following procedure:

a. If during an investigation or inspection of a Licensee, a Division investigator develops objective and reasonable grounds to believe certain Regulated Marijuana constitute evidence of acts in violation of the Marijuana Code or rules promulgated pursuant to it, or constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Regulated Marijuana pending further investigation of an alleged violation of the Marijuana Code or Marijuana Rules. The notice of administrative hold shall provide a documented description of the Regulated Marijuana to be subject to the

administrative hold ~~and a concise statement that is promptly issued and approved by the Director, or his or her designee, regarding the reasons for issuing the administrative hold~~. Following the issuance of a notice of administrative hold, the Division will identify the Regulated Marijuana subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. See Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System.

b. ~~Following the issuance of a notice of administrative hold, the Division will identify the Regulated Marijuana subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. *See* Rule 3-805 Regulated Marijuana Businesses: Inventory Tracking System~~. The Senior Director, or their designee, shall promptly approve and issue a concise statement regarding the reasons for issuing the administrative hold and outlining the estimated time required to complete the investigation. The estimated time required to complete the investigation is not binding and may be adjusted at any time with or without prior notice to the Licensee.

2~~c~~. The Licensee shall completely and physically segregate the Regulated Marijuana subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee.

a~~d~~. While the administrative hold is in effect, the Licensee is prohibited from, giving away, Transferring, transporting, or destroying the Regulated Marijuana subject to the administrative hold, except as otherwise authorized by these rules.

b~~e~~. While the administrative hold is in effect, the Licensee must safeguard the Regulated Marijuana subject to the administrative hold, must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements as set forth in the Marijuana Code and the Marijuana R~~r~~ules ~~of the State Licensing Authority~~.

c~~f~~. Nothing herein shall prevent a Licensee from voluntarily surrendering Regulated Marijuana that is subject to an administrative hold, except that the Licensee must follow the procedures set forth in paragraph (C) for voluntary surrender of Regulated Marijuana.

d~~g~~. Nothing herein shall prevent a Licensee from the continued possession, cultivation or harvesting of the Regulated Marijuana subject to the administrative hold. All Regulated Marijuana subject to an administrative hold must be put into separate Harvest Batches.

e. If the Division determines that the need to preserve evidence has subsided, the Licensee may destroy the Regulated Marijuana subject to an administrative hold at its expense, with advance approval from and in coordination with the Division, and in accordance with Rule 3-230 – Waste Disposal.

3~~h~~. Lift, Expiration, or Extension of Administrative Hold.

a. At any time after the initiation of the administrative hold, the administrative hold may be lifted by a Division Investigator or by agreement between the State Licensing Authority and the Licensee subject to the administrative hold~~Division may lift the administrative hold, order the continuation of the administrative hold~~

~~pending the administrative process, or seek other appropriate relief~~. If a Division investigator determines to lift the administrative hold, the investigator will send the Licensee written notification of the reason the administrative hold is being lifted.

b. At any time after the initiation of the administrative hold, the State Licensing Authority may lift, revise, or extend the administrative hold by agreement between the State Licensing Authority and the Licensee subject to the administrative hold.

c. An administrative hold expires after 120 days unless an administrative action has been initiated concerning the Regulated Marijuana subject to the administrative hold, or the State Licensing Authority extends the administrative hold.

d. The State Licensing Authority's order to extend the administrative hold will identify the reasons for extending the administrative hold. The State Licensing Authority will consider the following factors when deciding whether to extend an administrative hold:

i. The Licensee's failure to cooperate with Division investigators;

ii. The Licensee's compliance history;

iii. Whether the Licensee complied with all record keeping and inventory tracking requirements, including the usage of required RFID tags;

iv. Whether the License complied with video surveillance, Security Alarm System, and lock requirements;

v. Whether the Licensee obtained or maintained all required state or local licenses;

vi. The Licensee's tax compliance history; and

vii. The preservation of evidence for a pending administrative action.

B.5. Embargo.

1. Notice of Embargo.

a. The Division may embargo Regulated Marijuana when there are objective and reasonable grounds to believe that the health, safety, or welfare of the public imperatively requires emergency action.

b. A Division investigator will issue a Notice of Embargo including a description of the Regulated Marijuana and identifying any permitted activities regarding the Regulated Marijuana subject to the embargo. Following the issuance of a Notice of Embargo, the Division will identify the Regulated Marijuana subject to embargo in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. See Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System.

c. The Senior Director, or their designee, shall promptly approve and issue a concise statement regarding the reasons for issuing the embargo.

2. The Effect of Embargo.

a. The Licensee shall completely and physically segregate the Regulated Marijuana subject to the embargo in a Limited Access Area of the Licensed Premises.

a. While the embargo is in effect, the Licensee is prohibited from Transferring, or transporting the Regulated Marijuana subject to the embargo, except as otherwise authorized by these Rules. The Licensee can choose to destroy the Regulated Marijuana that is the subject of the embargo at its expense, with advance approval from and in coordination with the Division and in accordance with Rule 3-230 – Waste Disposal.

b. While the embargo is in effect, the Licensee must safeguard the Regulated Marijuana subject to the embargo, must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements as set forth in the Marijuana Rules.

3. Notice of Destruction.

a. Within 60 days of receiving a Notice of Destruction, a Licensee may request a hearing pursuant to Rule 8-220(B). Failure to request a hearing within the 60 day time period automatically results in the Notice of Destruction becoming an order of destruction.

b. If a Licensee requests a hearing, the hearing will be conducted by a Department of Revenue Hearing Officer pursuant to section 24-4-105, C.R.S. The sole issue at the hearing will be whether the Regulated Marijuana subject to the embargo poses a threat to the health, safety, or welfare of the public and therefore should be destroyed. Following the hearing, the Hearing Officer will issue an Initial Decision that is subject to exceptions and judicial review.

c. If a destruction is ordered pursuant to this Rule 8-110(B.5)(3), the Licensee is responsible for completing the destruction in coordination with the Division and in accordance with the Marijuana Rules. The Licensee is also responsible for all expenses related to the embargo and destruction of Regulated Marijuana.

4. The Division may seek the assistance of the Department of Public Health and Environment in connection with an embargo or a hearing seeking destruction of Regulated Marijuana.

C. Voluntary Surrender of Regulated Marijuana.

1. A Licensee, prior to a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Regulated Marijuana to the Division.

a. Such voluntary surrender may require destruction of any Regulated Marijuana in the presence of a Division investigator and at the Licensee's expense.

b. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

2. The voluntary surrender form may be utilized in connection with a stipulated agency order through which the Licensee waives the right to hearing and any associated rights.

3. The voluntary surrender form may be utilized even if the Licensee does not waive the right to hearing and any associated rights, with the understanding that the outcome of the hearing does not impact the validity of the voluntary surrender.

4. A Licensee, after a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Regulated Marijuana to the Division.

   a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.

   b. Such voluntary surrender may require destruction of any Regulated Marijuana in the presence of a Division investigator and at the Licensee's expense.

   c. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

Basis and Purpose – 8-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(f), 44-10-203(1)(g), 44-10-203(1)(k), and 44-10-902. The purpose of this rule is to provide guidance following either an agency decision or under any circumstances where the Licensee is ordered to surrender and/or destroy unauthorized Regulated Marijuana. This rule also provides guidance as to the need to preserve evidence during agency investigations or subject to agency order. This Rule 8-115 was previously Rules M and R 1203, 1 CCR 212-1 and 1 CCR 212-2.

8-115 – Disposition of Unauthorized Regulated Marijuana

A. After a Final Agency Order Mandates the Destruction of Regulated Marijuana. If the State Licensing Authority issues a Final Agency Order pursuant to section 44-10-902, C.R.S., that orders the destruction of some or all of the Licensee's unauthorized Regulated, the Licensee may:

   1. Voluntarily Surrender. The Licensee may voluntarily surrender to the Division all of its unauthorized Regulated Marijuana that are described in the Final Agency Order in accordance with the provisions of Rule 8-110(C).

   2. Seek A Stay. The Licensee may file a petition for a stay of the Final Agency Order with the Denver district court within 15 days of the date of the Final Agency Order.

   3. Take No Action. If the Licensee does not either (1) voluntarily surrender its unauthorized Regulated Marijuana as set forth in subparagraph (A)(1) of this Rule; or (2) properly seek a stay of the Final Agency Order as set forth in subparagraph (A)(2) of this Rule, the Division will enter upon the Licensed Premises and seize and destroy the unauthorized Regulated Marijuana that are the subject of the Final Agency Order.

B. General Requirements Applicable To All Licensees Following Final Agency Order To Destroy Unauthorized Regulated Marijuana. The following requirements apply regardless of whether the Licensee voluntarily surrenders its unauthorized Regulated Marijuana, seeks a stay of agency action, or takes no action:

   1. The 15 day period set forth in section 44-10-902(5), C.R.S., and this Rule shall include holidays and weekends.

2. During the period of time between the issuance of the Final Agency Order and the destruction of the unauthorized Regulated Marijuana the Licensee shall not sell, destroy, or otherwise let any unauthorized Regulated Marijuana that are subject to the Final Agency Order leave the Licensed Premises, unless specifically authorized by the State Licensing Authority or Court order.

3. During the period of time between the issuance of the Final Agency Order and the destruction of unauthorized Regulated Marijuana, the Licensee must safeguard any unauthorized Regulated Marijuana in its possession or control and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Marijuana Code and the rules of the State Licensing Authority.

4. Unless the State Licensing Authority otherwise orders, the Licensee may cultivate, water, or otherwise care for any unauthorized Regulated Marijuana that are subject to the Final Agency Order during the period of time between the issuance of the Final Agency order and the destruction of the unauthorized Regulated Marijuana.

5. If a district attorney notifies the Division that some or all of the unauthorized Regulated Marijuana is involved in an investigation, the Division shall not destroy the unauthorized Regulated Marijuana until approved by the district attorney.

Basis and Purpose – 8-120

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(f), 44-10-203(1)(g), 44-10-203(1)(k), and 44-10-203(2)(w), C.R.S. This rule explains that Division investigators may exercise discretion in issuing written warning when, during the course of a compliance check or investigation, the Division investigator identifies a violation(s) of the Marijuana Code or the rules promulgated thereunder. This rule also explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of a written warning or an assurance of voluntary compliance. This Rule 8-120 was previously Rules M and R 1204, 1 CCR 212-1 and 1 CCR 212-2.

8-120 – Written Warnings and Assurances of Voluntary Compliance

A. Written Warnings. During an investigation, if a Division investigator identifies a violation(s) of the Marijuana Code or the rules promulgated thereunder, the Division investigator may issue a written warning in lieu of recommending immediate administrative action.

1. The written warning shall identify the alleged violation(s).

2. The written warning shall not constitute an admission of a violation(s) for any purpose or finding of a violation(s) by the State Licensing Authority, and shall not be evidence that Licensee violated the Marijuana Code, or the rules promulgated thereunder.

3. A written warning shall constitute evidence in any subsequent administrative proceeding, if relevant, that the Licensee was previously warned of the violation(s).

4. The Division may in its discretion initiate a subsequent administrative action and prove the violation(s) that was the subject of the written warning

B. Assurances of Voluntary Compliance. The Director of the Division may accept an assurance of voluntary compliance regarding any act or practice alleged to violate the Marijuana Code, or the rules thereunder.

1. The assurance must be in writing and may include a stipulation for the voluntary payment of the cost commensurate with the acts or practices and an amount necessary to restore money or property which may have been acquired by the alleged violator because of the acts or practices.

2. An assurance of voluntary compliance may not be considered an admission of a violation(s) for any purpose or a finding of a violation(s) by the State Licensing Authority; however, the assurance of voluntary compliance shall constitute evidence in any subsequent administrative proceeding that Licensee entered into an agreement to comply with the Marijuana Code, and/or the rules promulgated thereunder.

3. The State Licensing Authority may approve or review an assurance of voluntary compliance.

C. Not a Disciplinary Action. Neither a written warning nor an assurance of voluntary compliance constitutes a disciplinary action.

Basis and Purpose – 8-125

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(5), 44-10-203(1)(e), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(l), C.R.S. The purpose of this rule is to establish the circumstances under which the State Licensing Authority may seek from a district court an investigative subpoena and what reasonable efforts the Division may take prior to seeking an investigative subpoena. The Division has encountered circumstances that would have justified such an investigative subpoena. Establishing the criteria under which the Division may seek an investigative subpoena will provide district courts guidelines under which to evaluate a petition for an investigative subpoena.

8-125 – Investigative Subpoenas

A. Criteria. The State Licensing Authority may petition a district court for an investigative subpoena applicable to a Person who is not licensed pursuant to the Marijuana Code to obtain documents or information necessary to enforce the Marijuana Code and these Rules after the Division has taken reasonable efforts to obtain requested documents or information.

B. Reasonable Efforts. For purposes of this Rule 8-125, “reasonable efforts” may include but shall not be limited to obtaining the documents or information through a request to the unlicensed Person and such unlicensed Person has either declined to provide the documents or information, or failed to respond to the Division within the applicable time frame.

C. Affidavit. When seeking an investigative subpoena, the Division will supply the district court with a sworn affidavit explaining the bases for seeking the subpoena.

Basis and Purpose – 8-130

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(e), 44-10-203(2)(l), 44-10-203(1)(e), 44-10-203(1)(g), and 44-10-203(2)(w), C.R.S. The purpose of this rule is to establish the circumstances under which the Division may seek from a district court an administrative warrant to search and/or seize marijuana and marijuana products, or other evidence indicating a violation of the Marijuana Code or rules. The Division has encountered circumstances that would have justified such a warrant. Establishing the criteria under which the Division may seek an administrative warrant will give fair notice to the regulated community regarding the types of violations that would lead to a request for an administrative warrant. This Rule 8-130 was previously Rules M and R 1309, 1 CCR 212-1 and 1 CCR 212-2.

8-130 – Administrative Warrants

A. Criteria. The Division may seek from a district court an administrative search warrant authorizing search and seizure in circumstances in which the Division makes a proper showing that:

1. A Licensee has refused entry of Division investigators during business hours or times of apparent activity;

2. A Licensee subject to an administrative hold or summary suspension has failed to comply with applicable rules; or

3. A Licensee otherwise has acted in a manner demonstrating disregard for the Marijuana Code and the State Licensing Authority's rules or that threatens the public health, safety, and welfare.

B. Affidavit. When seeking an administrative search warrant, the Division will supply the district court with a sworn affidavit explaining the bases for seeking the warrant.

C. Seized Property. If the Division seizes marijuana, neither the Division nor the State Licensing Authority shall cultivate or care for any seized marijuana or marijuana products. The Division may seek from the district court an order to destroy any such marijuana or marijuana products.

8-200 Series – Discipline and Administrative Hearings

Basis and Purpose – 8-205

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 44-10-701, 44-10-901, and 24-4-105 C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify how the disciplinary process for non-summary license suspensions and license revocations is initiated. This Rule 8-205 was previously Rules M and R 1301, 1 CCR 212-1 and 1 CCR 212-2.

8-205 –Non-Summary Suspensions

A. How a Disciplinary Action is Initiated.

1. If the State Licensing Authority, on its own initiative or based on a complaint, has reasonable cause to believe that a Licensee has violated the Marijuana Code, any rule promulgated pursuant to it, or any of its orders, the State Licensing Authority shall issue and serve upon the Licensee an Order to Show Cause (administrative citation) as to why its license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

2. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the license could be suspended, revoked, restricted, fined, or subject to other disciplinary sanction should the charges contained in the notice be sustained upon final hearing.

B. Disciplinary Hearings. Disciplinary hearings will be conducted in accordance with Rule 8-220 – Administrative Hearings.

C. Renewal. The issuance of an Order to Show Cause does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

Basis and Purpose – 8-210

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 24-4-104(4)(a), 44-10-701, 44-10-901, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to set forth the process for summary suspensions when the State Licensing Authority has cause to immediately suspend a license prior to and pending a hearing and final agency order. Summary suspensions will be imposed when the State Licensing Authority has reason to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and welfare imperatively require emergency action. The rule ensures proper due process for Licensees when their licenses are temporarily or summarily suspended by requiring prompt initiation of disciplinary proceedings after such suspensions. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause. This Rule 8-210 was previously Rules M and R 1302, 1 CCR 212-1 and 1 CCR 212-2.

8-210 – Summary Suspensions

A. How a Summary Suspension Action is Initiated.

1. When the State Licensing Authority has reasonable grounds to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety, or welfare imperatively requires emergency action it shall serve upon the Licensee a Summary Suspension Order that temporarily or summarily suspends the license.

2. The Summary Suspension Order shall identify the nature of the State Licensing Authority's basis for the summary suspension. The Summary Suspension Order shall also provide an advisement that the License may be subject to further discipline or revocation following a hearing on an Order to Show Cause.

3. Proceedings for suspension or revocation shall be promptly instituted and determined after the Summary Suspension Order is issued in accordance with the following procedure:

a. After the Summary Suspension Order is issued, the State Licensing Authority shall promptly issue and serve upon the Licensee an Order to Show Cause (administrative citation) as to why the Licensee's license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

b. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The Order to Show Cause shall also provide an advisement that the license could be suspended, revoked, restricted, fined or subject to disciplinary sanction should the charges contained in the Order to Show Cause be sustained upon final hearing.

c. The Order to Show Cause shall be filed with the Department's Hearings Division. The hearing on the allegations set forth in the Order to Show Cause shall be expedited to the extent practicable and will be conducted in accordance with Rule 8-220 – Administrative Hearings.

B. Duration of Summary Suspension. Unless lifted by the State Licensing Authority, the Summary Suspension Order shall remain in effect until issuance of a Final Agency Order.

Basis and Purpose – 8-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 44-10-701, 44-10-901, 24-4-104(4)(a), and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Regulated Marijuana is adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension. This Rule 8-215 was previously Rules M and R 1303, 1 CCR 212-1 and 1 CCR 212-2.

8-215 – Suspension Process: Regular and Summary Suspensions

A. Signs Required During Suspension. Every Licensee whose license has been suspended, whether summarily or after an administrative hearing, shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be at least 17 inches in length and 11 inches in width containing lettering not less than 1/2'' in height.

1. For suspension following issuance of a Final Agency Order, the sign shall be in the following form:

   NOTICE OF SUSPENSION

   REGULATED MARIJUANA LICENSES ISSUED

   FOR THESE PREMISES HAVE BEEN

   SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

   FOR VIOLATION OF THE COLORADO MARIJUANA CODE

2. For a summary suspension pending issuance of a Final Agency Order, the sign shall be in the following form:

   NOTICE OF SUSPENSION

   REGULATED MARIJUANA LICENSES ISSUED

   FOR THESE PREMISES HAVE BEEN

   SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

   FOR ALLEGED VIOLATION OF THE COLORADO MARIJUANA CODE

Any advertisement or posted signs that indicate that the premises have been closed or business suspended for any reason other than by the manner described in this Rule shall be deemed a violation of these rules.

B. Prohibited Activity During Active Suspension.

1. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not permit the serving, giving away, distribution, manufacture, sampling, acquisition, purchase, testing, Transfer, or transport of Regulated Marijuana on or from the Licensed Premises, nor allow patients or consumers to enter the Licensed Premises.

2. Unless otherwise ordered by the State Licensing Authority, during any period of suspension the Licensee may continue to possess, maintain, cultivate, or harvest Regulated Marijuana on the Licensed Premises. The Licensee must fully account for all such Regulated Marijuana in the Inventory Tracking System. The Licensee must safeguard any Regulated Marijuana in its possession or control. The Licensee must possess and maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Marijuana Code and the rules of the State Licensing Authority.

C. Removal and Destruction of Regulated Marijuana. Regulated Marijuana shall not be removed from the Licensed Premises or destroyed unless:

1. The provisions described in section 44-10-902, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. *See also* Rule 8-115 – Disposition of Unauthorized Regulated Marijuana;

2. The Licensee has voluntarily surrendered the Regulated Marijuana in accordance with Rule 8-110(C) – Voluntary Surrender; or

3. The State Licensing Authority has seized the Regulated Marijuana pursuant to an Administrative Warrant. *See* Rule 8-130 – Administrative Warrant.

D. Renewal. The issuance of an Order to Show Cause or an Order of Summary Suspension does not relieve the Licensee of the obligation to timely comply with all license renewal requirements. The Division's approval of any renewal application filed by a Licensee while subject to an Order to Show Cause or an Order of Summary Suspension shall not constitute a Final Agency Order or an agreement to a settlement of the administrative action. The Licensee shall continue to comply with the requirements of this Rule pending a Final Agency Order resolving the Order of Summary Suspension and any related Order to Show Cause.

Basis and Purpose – 8-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(g), 44-10-203(2)(l), 44-10-204(1)(a), 44-10-701, 44-10-901, 24-4-104, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish what entity conducts the administrative hearings, the procedures governing administrative hearings, and other general hearings issues. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause, and to clarify that an answer is required only for two types of administrative notices: an Order to Show Cause and a Notice of Grounds for Denial. This Rule 8-220 was previously Rules M and R 1304, 1 CCR 212-1 and 1 CCR 212-2.

***Please Note:** The following proposed rule revisions are intended to implement HB 23-1021.*

8-220 – Administrative Hearings

A. General Procedures.

1. Hearing Location. Hearings will generally be conducted by the Department's Hearings Division. Hearings will be held virtually unless otherwise ordered by the hearing officer for good cause. "Good cause" for an in-person hearing means that there are unusual circumstances where justice, judicial economy, and convenience of the parties would be served by holding a hearing in person. The Division, Respondent or Denied Applicant may request a hearing officer order an in-person hearing upon a showing of good cause. If the hearing officer orders an in-person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer.

2. Scope of Hearing Rules. This Rule shall be construed to promote the just and efficient determination of all matters presented.

3. Right to Legal Counsel. Any Denied Applicant or Respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the Denied Applicant's or Respondent's expense. Unless a Denied Applicant or Respondent that is an entity satisfies the exception in section 13-1-127(2), C.R.S., the Denied Applicant or Respondent must be represented by an attorney admitted to practice law in the state of Colorado.

4. Service. An Order to Show Cause, a Notice of Destruction, or a Notice of Denial must be served on a Respondent or Denied Applicant personally or by first-class mail. Service of pleadings or other papers on a Denied Applicant, Respondent, or any attorney representing a party, may be made by hand delivery, by mail to the party's last known address, or by electronic mail. Service of pleadings or other papers on the Division in an administrative hearing may be made to the attorney(s) of record, as identified on the Certificate of Service to the Order to Show Cause, Order of Summary Suspension, Notice of Destruction, or Notice of Denial, by electronic mail or first-class mail.

B. Requesting a Hearing.

1. A Denied Applicant that has been served with a Notice of Denial may request a hearing within 60 days of the service of the Notice of Denial by making a written request for a hearing to the Division. The request must be submitted by United States mail or by hand delivery. Email or fax requests will not be considered. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the Notice of Denial. An untimely request for hearing will not be considered.

2. A Denied Applicant that timely requests a hearing following issuance of a Notice of Denial shall be served with a Notice of Grounds for Denial, and shall be entitled to a hearing regarding the matters addressed therein.

3. A Respondent that has been served with an Order to Show Cause shall be entitled to a hearing regarding the matters addressed therein.

4. A Licensee that has been served with a Notice of Destruction may request a hearing within 60 days of the service of the Notice of Destruction by making a written request for a hearing to the Division.

   a. The request must be submitted by United States mail or by hand delivery. Email or fax requests will not be considered. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a

hearing must be received by the Division within the time stated in the Notice of Destruction. An untimely request for hearing will not be considered.

b. If a Notice of Destruction is served concerning embargoed Regulated Marijuana that is also subject of an administrative action, and a hearing is timely requested by the Respondent, a single hearing shall be held for the efficiency of the Hearings Division and the parties.

C. When a Responsive Pleading is Required.

1. A Respondent shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Order to Show Cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a Respondent fails to file a required answer, the hearing officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this Rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

2. A Denied Applicant shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Notice of Grounds for Denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a Denied Applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this Rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

D. Hearing Notices.

1. Notice to Set. The Division shall send a notice to set a hearing to the Denied Applicant or Respondent in writing by electronic mail or by first-class mail to the last mailing address of record if an electronic mail address is unknown.

2. Notice of Hearing. The Hearings Division shall notify the Division and Denied Applicant or Respondent of the date, place, time, and nature of the hearing regarding denial of the license application, order of destruction, or whether discipline should be imposed against the Respondent's license at least 30 days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied Applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

a. If an Order of Summary Suspension has issued, the hearing on the Order to Show Cause will be scheduled and held promptly.

b. Continuances may be granted for good cause, as described in this Rule, shown. A motion for a continuance must be timely.

c. "Good cause" for a continuance may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final

decision maker. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

E. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the hearing officer's own motion. If a prehearing conference is held and a prehearing order is issued by the hearing officer, the prehearing order will control the course of the proceedings.

2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with subsections (D)(2)(b) and (c) of this Rule.

3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the hearing officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

   a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.

   b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

   c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and Denied Applicant or Respondent using letters.

   d. Stipulations. A list of all stipulations of fact or law reached, as well as a list of any additional stipulations requested or offered to facilitate disposition of the case.

4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.

5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

F. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed. Electronic filings will be accepted at: dor_regulatoryhearings@state.co.us.

3. The hearing officer shall administer oaths or affirmations to all witnesses at hearing. The hearing officer may question any witness.

4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.

   a. Reports and other information that would otherwise be confidential pursuant to subsection 44-10-204(1)(a), C.R.S., may be introduced as exhibits at hearing.

   b. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.

5. Court Rules.

   a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word “court,” “judge,” or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean a hearing officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.

   b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean a hearing officer.

6. Exhibits.

   a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.

   b. The Division shall use numbers to mark its exhibits.

   c. The Denied Applicant or Respondent shall use letters to mark its exhibits.

7. The hearing officer may proceed with the hearing or enter default judgment if any party fails to appear at hearing after proper notice.

G. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an Initial Decision subject to review by the State Licensing Authority pursuant to the Colorado Administrative Procedure Act and as set forth in Rule 8-230 – Administrative Hearing Appeals/Exceptions to Initial Decision.

H. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the State Licensing Authority, or with conflicts counsel representing the hearing officer or State Licensing Authority, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the State Licensing Authority in connection with a hearing or with the exceptions process.

I. Marijuana Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.

Basis and Purpose – 8-225

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 24-4-105, and 44-10-901, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how all parties, including pro se parties, can obtain subpoenas during the administrative hearing process. This Rule 8-225 was previously Rules M and R 1305, 1 CCR 212-1 and 1 CCR 212-2.

8-225 – Administrative Subpoenas

A. Informal Exchange of Documents Encouraged. Parties are encouraged to exchange documents relevant to the Notice of Denial or Order to Show Cause prior to requesting subpoenas. In addition, to the extent practicable, parties are encouraged to secure the voluntary presence of witnesses necessary for the hearing prior to requesting subpoenas.

B. Hearing Officer May Issue Subpoenas.

1. A party or its counsel may request the hearing officer to issue subpoenas to secure the presence of witnesses or documents necessary for the hearing or a deposition, if one is allowed.

2. Requests for subpoenas to be issued by the hearing officer must be emailed to the Hearings Division at the Department of Revenue at dor_regulatoryhearings@state.co.us. Subpoena requests must include the return mailing address, and phone and facsimile numbers of the requesting party or its attorney.

3. Requests for subpoenas to be issued by the hearing officer may be made on a “Request for Subpoena” form authorized and provided by the Hearings Division, or on a “Request for Subpoena” request that includes the information below. A hearing officer shall not issue a subpoena unless the request contains the following information:

a. Name of Denied Applicant or Respondent;

b. License or application number;

c. Case number;

d. Date of hearing;

e. Location of hearing, or telephone number for telephone check-in;

f. Time of hearing;

g. Name of witness to be subpoenaed; and

h. Mailing address of witness (home or business).

4. A request for a subpoena *duces tecum* must identify each document or category of documents to be produced.

5. Requests for subpoenas shall be signed by the requesting party or its counsel.

6. The hearing officer shall issue subpoenas without discrimination, as set forth in section 24-4-105(5), C.R.S. If the reviewing hearing officer denies the issuance of a subpoena, or alters a subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record.

C. Service of Subpoenas.

1. Service of any subpoena is the duty of the party requesting the subpoena.

2. All subpoenas must be served at least two business days prior to the hearing.

D. Subpoena Enforcement.

1. Any subpoenaed witness, entity, or custodian of documents may move to quash the subpoena with the hearing officer.

2. A hearing officer may quash a subpoena if he or she finds on the record that compliance would be unduly burdensome or impracticable, unreasonably expensive, or is unnecessary.

Basis and Purpose – 8-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-701, 44-10-901, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how parties may appeal a hearing officer's Initial Decision pursuant to the Administrative Procedure Act. This Rule 8-230 was previously Rules M and R 1306, 1 CCR 212-1 and 1 CCR 212-2.

8-230 – Administrative Hearing Appeals/Exceptions to Initial Decision

A. Exception(s) Process. Any party may appeal an Initial Decision to the State Licensing Authority pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within 30 days after the date of mailing of the Initial Decision to the Denied Applicant or Respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these rules shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the State Licensing Authority is: State Licensing Authority, 1707 Cole Boulevard, Suite 350, Lakewood, CO 80401.

B. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the State Licensing Authority, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.

C. Deadline Modifications. The State Licensing Authority may modify deadlines and procedures related to the filing of exceptions to the Initial Decision upon motion by either party for good cause shown.

D. No Oral Argument Allowed. Requests for oral argument will not be considered.

Basis and Purpose – 8-235

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(l), 44-10-701, and 44-10-901(3)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IX). The purpose of this rule is to establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Marijuana Code, section 18-18-406.3(7), or any other applicable rule. The State Licensing Authority may pursue a violation in any of the categories described in this Rule and is not required to prove harm from any of the alleged violation types. This Rule 8-235 was previously Rules M and R 1307, 1 CCR 212-1 and 1 CCR 212-2.

8-235 – Penalties

A. Penalty Schedule. The State Licensing Authority will make determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:

1. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, Retail Marijuana sales to persons under the age of 21 years, Medical Marijuana sales to non-patients, consuming marijuana on the Licensed Premises, Regulated Marijuana sales in excess of the relevant sales limitations, permitting the diversion of Regulated Marijuana outside the regulated distribution system, possessing marijuana obtained from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in the Inventory Tracking System, failure to report any transfer required by section 44-10-313(11), knowingly adulterating or altering or attempting to adulterate or alter any Samples of Regulated Marijuana, violations related to sharing Licensed Premises between Medical Marijuana Businesses and Retail Marijuana Businesses, violations related to R&D Co-Location Permits, failure to maintain books and records to fully account for all transactions of the business, failure to cooperate with Division investigators during the course of a Division investigation, failure to comply with any requirement related to the Transfer of Sampling Units, utilizing advertising material that is misleading, deceptive, or false, advertising violations directly targeting minors, packaging or labeling violations that directly impact patient or consumer safety, or violations related to the mandatory testing program. Violations of this nature generally have an immediate or potential negative impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

2. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate or potential negative impact on the health, safety,

and welfare of the public at large. License violations may include but are not limited to, advertising and/or marketing violations, packaging or labeling violations that do not directly impact patient or consumer safety, failing to continuously escort a visitor in a Limited Access Area, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor or clerical errors in the Inventory Tracking System. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

3. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required Identification Badges, visitor badges, unauthorized modifications of the Licensed Premises of a minor nature, or failure to notify the State Licensing Authority of a minor change in ownership. The range of penalties for this category of violation may include license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to $10,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

B. Other Factors

1. The State Licensing Authority may take into consideration any aggravating and mitigating factors surrounding the violation which could impact the type or severity of penalty imposed.

2. The penalty structure is a framework providing guidance as to the range of violations, suspension description, fines, and mitigating and aggravating factors. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis.

3. For all administrative offenses involving a proposed suspension, a Licensee may petition the State Licensing Authority for permission to pay a monetary fine, within the provisions of section 44-10-901, C.R.S., in lieu of having its license suspended for all or part of the suspension.

C. Mitigating and Aggravating Factors. The State Licensing Authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

2. Good faith measures by the Licensee to prevent the violation, including the following:

   a. Proper supervision;

   b. Regularly-provided and documented employee training, provided the Licensee demonstrates all reasonable training measures were delivered prior to the Division's investigation;

   c. Standard operating procedures established prior to the Division's investigation, and which include procedures directly addressing the conduct for which imposition of a penalty is being considered; and

3. Licensee's past history of success or failure with compliance checks.

4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.

5. Willfulness and deliberateness of the violation.

6. Likelihood of reoccurrence of the violation.

7. Circumstances surrounding the violation, which may include, but are not limited to:

   a. Prior notification letter to the Licensee that an underage compliance check would be forthcoming.

   b. The dress or appearance of an underage operative used during an underage compliance check (*e.g.*, the operative was wearing a high school letter jacket).

   c. Licensee self-reported violation(s) of the Marijuana Code or rules promulgated pursuant to the Marijuana Code.

8. Owner or management personnel is the violator or has directed an employee or other individual to violate the law.

D. Responsible Vendor Designation. The State Licensing Authority shall consider responsible vendor designation pursuant to the 3-500 Series Rules as a mitigating factor when considering the imposition of sanctions or penalties.

Basis and Purpose – 8-240

The statutory authority for this rule includes but is not limited to sections 44-10-201(3), 44-10-201(4), 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(l), 44-10-203(2)(m), 44-10-203(1)(e), and 44-10-204(1)(a), C.R.S. The purpose of this rule is to assure Licensees do not use unauthorized confidential information at any time and do not engage the services of former State Licensing Authority or Division employees with regulatory oversight responsibilities for licensed marijuana businesses for the first 6 months following State Licensing Authority or Division employment. This Rule 8-240 was previously Rules M and R 1308, 1 CCR 212-1 and 1 CCR 212-2.

8-240 – Confidential Information and Former State Licensing Authority Employees

A. Misdemeanor if Disclosed. Disclosure of confidential records or information in violation of the Marijuana Code constitutes a class 1 misdemeanor pursuant to subsection 44-10-201(4), C.R.S.

1. Licensees, and employees or agents of Licensees, shall not obtain or utilize confidential information the Licensee, employee or agent is not lawfully entitled to possess and acquire through use or misuse of Division processes or Division-approved systems. For confidentiality requirements of State Licensing Authority and Division employees, *see* Rule 8-105 – Duties of Employees of the State Licensing Authority.

2. Any Licensee, and any employee or agent of a Licensee, who is authorized to access the Division's Inventory Tracking System and/or have access to confidential information derived from Division sources, shall utilize the confidential information only for a purpose authorized by the Division or these Rules.

3. All Licensees, and all employees and agents of Licensees, shall not use the Inventory Tracking System for any purpose other than tracking the Licensee's Regulated Marijuana and Regulated Marijuana Product.

B. Six-Month Prohibition from Working with Former State Licensing Authority Employees. State Licensing Authority or Division employees with regulatory oversight responsibilities for Regulated Marijuana Businesses are prohibited from working for, representing, or providing consulting services to or otherwise deriving pecuniary gain from a Licensee for a period of six months following his or her last day of employment with the State Licensing Authority or Division.

1. Any Licensee who utilizes, employs, consults, seeks advice from, or contracts with a former employee of the State Licensing Authority or the Division prior to the conclusion of the six-month period shall be in violation of the Marijuana Code.

2. Any Licensee who possesses, utilizes, or re-discloses confidential information obtained from a former State Licensing Authority or Division employee at any time shall be in violation of the Marijuana Code.

COLORADO
Department of Revenue
Marijuana Enforcement Division

NOTICE OF RULEMAKING HEARING

The State Licensing Authority ("State Licensing Authority") of the Colorado Department of Revenue, Marijuana Enforcement Division ("Division"), will consider the promulgation of additions and amendments to the State Licensing Authority's Colorado Marijuana Rules ("Rules"), as authorized by Article XVIII, Section 16 of the Colorado Constitution and the Colorado Marijuana Code, section 44-10-101 *et seq*., C.R.S. ("Marijuana Code"). For specific information regarding the proposed changes and new rules, please refer to the contents of this Notice and to the initial proposed rules, which are also available on the Division's website in addition to details regarding the initial proposed rules, public meetings, and opportunities for public comment.

STATUTORY AUTHORITY FOR RULEMAKING

The State Licensing Authority promulgates these rules pursuant to the authority granted in the Marijuana Code, Article XVIII, Section 16 of the Colorado Constitution, and section 24-4-103, C.R.S., of the state Administrative Procedure Act.

SUBJECT OF RULEMAKING

Pursuant to section 24-4-103(2), C.R.S., the Division will have initiated two (2) public meetings of representative groups of participants with an interest in the subject of the rulemaking ("stakeholder meetings"),the first meeting was on August 31, 2023, additional meeting will be on September 18, 2023, and October 12, 2023. The Division may hold one or more additional stakeholder meetings to ensure adequate time for all interested parties to have public discussion and provide public comments regarding proposed rules. More information related to these meetings can be found on the Division's website, including meeting agendas, proposed rule revisions, meeting locations and times, and meeting recordings. Each stakeholder meeting was noticed on the Division's website and the Division sent notification of the meetings to licensees and other stakeholders subscribed to receive updates from the Division. Each stakeholder meeting is open to any member of the public and any attendee is given the opportunity to comment on the specific proposed rule revisions, or any other rule that stakeholders are interested in seeing revisions to.

The Division will retain a record of the initial proposed rules as part of the rulemaking record. The initial proposed rules available on the Division's website are intended to provide interested persons with the initial proposed drafts of the permanent rules. The Division anticipates the initial proposed rules will be amended during the stakeholder engagement process, based on written comments and any supporting documentation submitted by the

public and based on the Division's internal review. Additional or new rules may also be added.

The Division intends to recommend to the State Licensing Authority for consideration the promulgation of new and amended rules on the subjects outlined below. This list includes implementing legislation passed during the 2023 legislative session (allowing Retail Marijuana Stores to process online payments, renewals while local jurisdiction approval is outstanding, and packaging and labeling rules related to intoxicating cannabinoids); stakeholder recommendations from the Science & Policy Work Forum (a stakeholder forum established by the Division in collaboration with the Colorado Department of Public Health and Environment); rules related to Marijuana Hospitality Businesses, revising and clarifying prior rules; and addressing any other subject matter necessary to implement, interpret, and effectively administer and enforce the Marijuana Code. **This list is not exhaustive, and the State Licensing Authority may consider any additional rule or amendment to any rule**.

Please take note that in addition to the subject matters addressed in the initial proposed rules, the State Licensing Authority will consider additional rules consistent with any subject matter needed to implement and interpret the Colorado Marijuana Code, and Article XVIII, Sections 14 and 16 of the Colorado Constitution. The rulemaking hearing will include, but will not be limited to, presentations on proposed rules to implement legislative changes adopted during the 2023 legislative session.

The final proposed rules will be published on the Division's website on October 23, 2023. Other relevant information regarding this rulemaking also will be posted on the Division's website.

RULES TO BE CONSIDERED FOR ADOPTION PURSUANT TO THE MARIJUANA CODE

Part 1 – GENERAL APPLICABILITY

Rule 1-115 – Definitions

Part 2 – APPLICATION AND LICENSES

Rule 2-220 - Initial Application Requirements for Regulated Marijuana Businesses

2-225 - Renewal Application Requirements for All Licenses

2-265 - Owner and Employee License: License Requirements, Applications, Qualifications, and Privileges (?)

Part 3 – REGULATED MARIJUANA BUSINESS OPERATIONS

Rule 3-110 - Regulated Marijuana Businesses: General Restrictions

3-320 - Contaminated Product

3-330 - Cultivation of Regulated Marijuana: Specific Health and Safety Requirements

3-335 - Production of Regulated Marijuana Concentrate and Regulated Marijuana Products: Specific Health and Safety Requirements - No Revisions - remove?

3-615 - Regulated Marijuana Delivery Permits

3-810 - Minimum Tracking Requirements

3-825 - Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities Specific Tracking Requirements

3-905 - Business Records Required

3-1005 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility

3-1010 - Packaging and Labeling: General Requirements Prior to Transfer to a Patient or Consumer

3-1015 - Additional Labeling Requirements Prior to Transfer to a Patient or Consumer

Part 4 – REGULATED MARIJUANA TESTING PROGRAM

Rule 4-110 - Regulated Marijuana Testing Program: Sampling Procedures

4-115 - Regulated Marijuana Testing Program: Sampling and Testing Program

4-120 - Regulated Marijuana Testing Program: Contaminant Testing

4-121 - Regulated Marijuana Testing Program: Wet Whole Plant Contaminant Testing

Part 5 – MEDICAL MARIJUANA BUSINESS LICENSE TYPES

Rule 5-105 - Medical Marijuana Store: License Privileges

5-205 - Medical Marijuana Cultivation Facility: License Privileges

5-305 - Medical Marijuana Products Manufacturer: License Privileges

5-405 - Medical Marijuana Testing Facilities: License Privileges

5-410 - Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts

5-420 - Medical Marijuana Testing Facilities: Personnel

5-430 - Medical Marijuana Testing Facilities: Analytical Processes

Part 6 – RETAIL MARIJUANA BUSINESS LICENSE TYPES

Rule 6-105 - Retail Marijuana Store: License Privileges

6-110 - Retail Marijuana Store: General Limitations or Prohibited Acts

6-205 - Retail Marijuana Cultivation Facility: License Privileges

6-305 - Retail Marijuana Products Manufacturer: License Privileges

6-405 - Retail Marijuana Testing Facilities: License Privileges

6-410 - Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

6-420 - Retail Marijuana Testing Facilities: Personnel

6-425 - Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

6-430 - Retail Marijuana Testing Facilities: Analytical Processes

6-705 - Accelerator Cultivator: License Privileges

6-805 - Accelerator Manufacturer: License Privileges

6-905 - Licensed Hospitality Businesses: General Provisions

6-925 - Retail Marijuana Hospitality and Sales Businesses: Additional License Privileges and Restrictions

6-926 - Retail Marijuana Hospitality and Sales Businesses: Spa Businesses

6-930 - Retail Marijuana Hospitality and Sales Businesses: General Limitations and Prohibited Acts

6-1105 - Accelerator Store: License Privileges

6-1110 - Accelerator Store: General Limitations or Prohibited Acts

Part 8 – ENFORCEMENT AND DISCIPLINE

Rule 8-110 - Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

8-220 - Administrative Hearings

STATEMENTS OF BASIS AND PURPOSE

For the Marijuana Rules at 1 CCR 212-3, including but not limited to the following:

2-225, 6-926, 8-110, 8-220.

Any other rules necessary to implement the Marijuana Code may be adopted.

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of this rulemaking proceeding and permanent rulemaking hearing, to be held on **October 30, 2023**, will include the written and recorded materials from the stakeholder meetings and any written comments or oral testimony submitted or presented.

2. Written Comments. The Division and State Licensing Authority encourage interested parties to submit written comments on the proposed rules, including alternate proposals, by **October 16, 2023**, which will allow the Division and State Licensing Authority to review comments prior to the rulemaking hearing. However, written comments will also be accepted after that date. **The deadline to submit written comments is 5:00 P.M. on October 30, 2023**.

   The State Licensing Authority will accept all comments, but strongly encourages written comments to be submitted on the Marijuana Enforcement Division Suggested Revision to Rules Form. The State Licensing Authority strongly encourages that all rule comments be submitted electronically, however, completed written comments may also be submitted to:

   Marijuana Enforcement Division
   Re: Rules
   1697 Cole Boulevard, Ste. 200
   Lakewood, CO 80401

3. Oral Comments. The State Licensing Authority may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. Oral presentations will likely be limited to three minutes or less per person.

HEARING SCHEDULE

Date: **Monday, October 30, 2023**

Time: **12:00 p.m. – 5:00 p.m.**
* Please note the rulemaking hearing may conclude prior to 5:00 p.m.

Place: **Virtual Zoom Meeting**
Join Zoom Meeting https://us02web.zoom.us/j/86115519267
Meeting ID: 861 1551 9267
Call-in option: (719)359-4580

In-Person Option
1707 Cole Blvd, Ste. 300

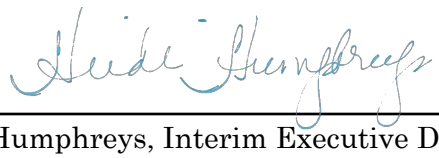
Golden, CO 80401
3rd Floor Red Rocks Conference Room

Additional information regarding the rule hearing will be published on the Division's website. The hearing may be continued at such place and time as the State Licensing Authority may announce. The State Licensing Authority will deliberate upon the rulemaking record, including oral testimony and written comments, presented as well as applicable law. The State Licensing Authority will adopt such rules as in her judgment are justified by the rulemaking record and applicable law.

If you are an individual with a disability who needs reasonable accommodation in order to participate in this rulemaking hearing, please contact Dyann Smart at Dyann.Smart@state.co.us or (303) 866-2625.

Dated this 13th day of September, 2023.

THE COLORADO DEPARTMENT OF REVENUE,
INTERIM EXECUTIVE DIRECTOR/STATE LICENSING AUTHORITY, MARIJUANA ENFORCEMENT DIVISION



Heidi Humphreys, Interim Executive Director
State Licensing Authority
Colorado Department of Revenue

Notice of Proposed Rulemaking

Tracking number

2023-00605

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-8

Rule title

RULES FOR THE ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

Rulemaking Hearing

Date

11/08/2023

Time

09:00 AM

Location

201 E. Colfax, Denver

Subjects and issues involved

This rulemaking process has been initiated as a result of the requirements of the Individuals with Disabilities Education Act (IDEA), House Bill 22-1295, and the Memorandum of Understanding entered into by the Department and the Colorado Department of Early Childhood in regard to preschool special education services. These rule amendments are intended to:

Allow for the per child rate for preschool services paid by the Colorado Department of Early Childhood to a charter school to be used in the calculation of tuition rates to be charged by a charter school for the provision of special education services.

Statutory authority

Article 30.5 of Title 22, C.R.S.,

Contact information

Name

Angela Maramba

Title

Director of State Board Relations

Telephone

7208224803

Email

Maramba_A@cde.state.co.us

Proposed Amendments to Address ECEA Tuition Costs Per H.B. 22-1295

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT 1 CCR 301-8

…

9.01 DEFINITIONS

9.01(1) **"Applicable revenues"** means:

9.01(1)(a) The Per Pupil Revenue (PPR), as follows:

9.01(1)(a)(i) The PPR of the chartering school district when a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., not including enrollment in multidistrict online schools;

9.01(1)(a)(ii) The PPR of the accounting district, as defined under Section 22-30.5- 513 (1)(a), C.R.S., when a child with a disability enrolls in and attends an institute charter school pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

9.01(1)(a)(iii) The PPR of the district of attendance when a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to Section 22-36-101, C.R.S., not including enrollment in multidistrict online schools;

9.01(1)(a)(iv) The PPR of the district of residence when an administrative unit of residence purchases services from another administrative unit for a specific special education program not available in the administrative unit of residence; or

9.01(1)(a)(v) The per pupil funding for online enrollment set by Section 22-54- 104(4.5), C.R.S., for a child with a disability enrolled in a multidistrict online school, including a multidistrict online school provided by a charter school.

9.01(1)(c) Monies available from federal sources.

9.01(1)(d) Monies received under ECEA.

9.01(1)(e) Monies received from other state agencies, including the per child rate for preschool services as determined by the Colorado Department of Early Childhood pursuant to section 26.5-4-208, C.R.S. ("per child preschool rate").

9.01(1)(f) Monies received from other administrative units, not including tuition.

9.01(1)(g) Monies received through grants and donations.

9.01(1)(h) For a child with a disability placed in an approved facility school, an amount equal to one and seventy-three hundredths (i.e., 173%) of the statewide base per pupil funding for the applicable budget year, pursuant to Section 22-54-129(c) (II), C.R.S.

…

9.01(8) **" Tuition Costs "** shall mean the amount of expenditures for special education services over and above applicable revenues, as defined in Section 9.01(1) of these Rules, for a child with a disability who receives his or her special education services in an approved facility school, charter school, public school of choice pursuant to Section 22-36-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S.

…

9.06 DOCUMENTATION OF TUITION COSTS

…

9.06(2) **Charter Schools, Excluding Charter Schools That Are On-line Programs**

The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section.

9.06(2)(a) Annually, charter schools, excluding charter schools that are also on-line programs, must submit to the Department an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. If appropriate, multiple rates may be set for different programs within the charter school. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

9.06(2)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

9.06(2)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(2)(b)(ii) The number of days in the school year during which the charter school offers the program;

9.06(2)(b)(iii) Expenditures for the regular education program, administration, personnel costs, business services, and occupancy; and

9.06(2)(b)(iv) The average number of children enrolled in the charter school, and the number of those children with disabilities.

9.06(2)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the chartering authority and shall be reasonably consistent with the ratios of the chartering authority, for serving students with comparable disabilities.

9.06(2)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.

9.06(2)(e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(2)(f) If the charter school accepts a child for which it has not received PPR or per child preschool rate funding, the PPR or per child preschool rate amounts must still be included as an applicable revenue for purposes of establishing tuition costs.

9.06(2)(g) If the charter school provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.

9.06(2)(h) In no case shall the total revenues received by the charter school for Department approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.

9.06(2)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the charter school.

9.06(2)(j) A percentage of the per pupil revenue or per child preschool rate, as documented on the rate setting form for each charter school, shall be applied as revenue toward the special education costs submitted on the rate setting form by the charter school.

Proposed Amendments to Address ECEA Tuition Costs Per H.B. 22-1295

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT 1 CCR 301-8

…

9.01 DEFINITIONS

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9.01(1)(a) The Per Pupil Revenue (PPR), as follows:

9.01(1)(a)(i) The PPR of the chartering school district when a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., not including enrollment in multidistrict online schools;

9.01(1)(a)(ii) The PPR of the accounting district, as defined under Section 22-30.5- 513 (1)(a), C.R.S., when a child with a disability enrolls in and attends an institute charter school pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

9.01(1)(a)(iii) The PPR of the district of attendance when a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to Section 22-36-101, C.R.S., not including enrollment in multidistrict online schools;

9.01(1)(a)(iv) The PPR of the district of residence when an administrative unit of residence purchases services from another administrative unit for a specific special education program not available in the administrative unit of residence; or

9.01(1)(a)(v) The per pupil funding for online enrollment set by Section 22-54- 104(4.5), C.R.S., for a child with a disability enrolled in a multidistrict online school, including a multidistrict online school provided by a charter school.

9.01(1)(c) Monies available from federal sources.

9.01(1)(d) Monies received under ECEA.

9.01(1)(e) Monies received from other state agencies, including the per child rate for preschool services as determined by the Colorado Department of Early Childhood pursuant to section 26.5-4-208, C.R.S. ("per child preschool rate").

9.01(1)(f) Monies received from other administrative units, not including tuition.

9.01(1)(g) Monies received through grants and donations.

9.01(1)(h) For a child with a disability placed in an approved facility school, an amount equal to one and seventy-three hundredths (i.e., 173%) of the statewide base per pupil funding for the applicable budget year, pursuant to Section 22-54-129(c) (II), C.R.S.

…

9.01(8) **" Tuition Costs "** shall mean the amount of expenditures for special education services over and above applicable revenues, as defined in Section 9.01(1) of these Rules, for a child with a disability who receives his or her special education services in an approved facility school, charter school, public school of choice pursuant to Section 22-36-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S.

…

9.06 DOCUMENTATION OF TUITION COSTS

…

9.06(2) **Charter Schools, Excluding Charter Schools That Are On-line Programs**

The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section.

9.06(2)(a) Annually, charter schools, excluding charter schools that are also on-line programs, must submit to the Department an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. If appropriate, multiple rates may be set for different programs within the charter school. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

9.06(2)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

9.06(2)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(2)(b)(ii) The number of days in the school year during which the charter school offers the program;

9.06(2)(b)(iii) Expenditures for the regular education program, administration, personnel costs, business services, and occupancy; and

9.06(2)(b)(iv) The average number of children enrolled in the charter school, and the number of those children with disabilities.

9.06(2)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the chartering authority, and shall be reasonably consistent with the ratios of the chartering authority, for serving students with comparable disabilities.

9.06(2)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.

9.06(2)(e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(2)(f) If the charter school accepts a child for which it has not received PPR or per child preschool rate funding, the PPR or per child preschool rate amounts must still be included as an applicable revenue for purposes of establishing tuition costs.

9.06(2)(g) If the charter school provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.

9.06(2)(h) In no case shall the total revenues received by the charter school for Department approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.

9.06(2)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the charter school.

9.06(2)(j) A percentage of the per pupil revenue or per child preschool rate, as documented on the rate setting form for each charter school, shall be applied as revenue toward the special education costs submitted on the rate setting form by the charter school.

Notice of Proposed Rulemaking

Tracking number

2023-00604

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-98

Rule title

RULES FOR THE ADMINISTRATION OF THE ADULT EDUCATION AND LITERACY GRANT PROGRAM

Rulemaking Hearing

Date

11/08/2023

Time

09:00 AM

Location

201 E. Colfax, Denver

Subjects and issues involved

The proposed amendments to the rules incorporate changes to the Adult Education and Literacy Act that were made because of Senate Bill 23-007. The goals of the Adult Education and Literacy Grant Program are to provide adults with education that leads to additional skills acquisition and may lead to postsecondary credentials and employment and that assist adults in providing academic support to their own children or to children in their care. Senate Bill 23-007 made the following adjustments to statute:

Adds digital literacy to the basic education offered to eligible adults through the Adult Education Grant Program;

Provides that an eligible adult may earn a high school diploma or equivalency certificate through

Statutory authority

The statutory authority for these rules is found in sections 22-10-104 and 22-10-105, C.R.S.

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Proposed Amendments to Align to S.B. 23-007

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE ADULT EDUCATION AND LITERACY GRANT PROGRAM

1 CCR 301-98

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

0.0 Statement of Basis and Purpose

The statutory authority for these rules is found in sections 22-10-104 and 22-10-105, C.R.S. The Adult Education and Literacy Act authorizes the Colorado Department of Education to provide state funding for workforce development partnerships through which eligible adults receive basic education in literacy, digital literacy, and numeracy that leads to additional skills acquisition, a high school diploma or an equivalency certificate, postsecondary credential attainment, and employment, or education attainment partnerships that assist adults in attaining basic literacy, digital literacy, and numeracy skills that lead to additional skill acquisition, and may lead to a high school diploma or an equivalency certificate, postsecondary credentials and employment, for the participating adults and their children or the children for whom they provide care.

1.0 Definitions

1.01 "Adult education and literacy programs" mean programs that provide adult basic education, adult education leading to a high school diploma or an equivalency credential, English as a second language instruction, or integrated basic education, digital literacy, and skills training.

1.02 "Adult education provider" means one of the following entities that the Department recognizes as providing appropriate and effective adult education and literacy programs:

(a) a secondary or postsecondary, public or private, nonprofit educational entity, including but not limited to a school district, charter school, board of cooperative services, state institution of higher education, local district college, and area technical college;

(b) a community-based nonprofit agency or organization;

(c) an Indian tribe or nation;

(d) a library;

(e) a literacy council or other literacy institute;

(f) a business or business association that provides adult education and literacy programs either on site or off site;

(g) a volunteer literacy organization;

(h) a local work force board, as defined in section 8-83-203, C.R.S., that oversees a work force development program described in the "Colorado Career Advancement Act";

(i) a one-stop partner, as described in section 8-83-216, C.R.S., under the "Colorado Career Advancement Act"; or

(j) a consortia of entities described in this rule 1.02.

1.03 "Department" means the Department of Education created and existing pursuant to section 24-1-115, C.R.S.

1.04 "Digital literacy" means the skills associated with using technology that enables users to find, evaluate, organize, create, disseminate, and communicate information online.

1.05 "Education attainment partnership" means a collaboration that assists adults in attaining basic literacy, digital literacy, and numeracy skills that lead to additional skill acquisition and may lead to postsecondary credentials and employment. At a minimum, an education attainment partnership must consist of at least one adult education provider that is not listed in rule 1.02(a) that partners with at least one elementary or secondary school or school district, a public or private institution of higher education, a local district college, or an area technical college.

1.06 "Eligible adult" means a person who:

1.06.1 Is at least 17 years of age

1.06.2 Is not enrolled in a public or private secondary school; and

1.06.3

(I) Lacks a high school diploma or its equivalency; or

(II) Is in need of English language instruction; or

(III) Lacks sufficient mastery of the basic literacy, digital literacy, and numeracy skills necessary to enable the person to function effectively in the workplace.

1.07 "English language instruction" means instruction that is designed to assist a person with limited English proficiency to achieve competence in the English language, thus allowing the person to understand and navigate governmental, educational, and workplace systems.

1.08 "Literacy" means a person's ability to read, write, and speak English at levels of proficiency that are necessary to function on the job and in society, achieve the person's goals, and develop the person's knowledge and potential.

1.09 "Numeracy" means a person's ability to compute and solve mathematical problems at levels of proficiency that are necessary to function on the job and in society, achieve the person's goals, and develop the person's knowledge and potential.

1.10 "State board" means the State Board of Education created in Section 1 of Article IX of the State Constitution.

1.11 "Workforce development partnership" means a collaboration that assists adults in attaining basic literacy, digital literacy, and numeracy skills leading to additional skill acquisition, postsecondary credentials, and employment. At a minimum, a workforce development partnership must include at least one adult education provider and at least one workforce development provider.

1.11.1 For purposes of this rule 1.11.1, a workforce development provider includes, but need not be limited to:

1.11.1.1 A work force development program described in the "Colorado Career Advancement Act," Part 2 of Article 83 of Title 8, C.R.S.; and

1.11.1.2 A program that is supported by the state workforce development council created in Article 46.3 of Title 24, C.R.S.

2.0 Application Requirements and Timeline

2.01 Grants will be awarded through a competitive application process. Funding will be subject to funding appropriations and grant recipients' annual demonstration of adequate progress toward achieving the goals of the adult education and literacy program that were specified in the grant application.

2.02 Any adult education provider interested in obtaining grant funding must submit an Adult Education and Literacy Grant application to the Department, using the application form provided by the Department. Any applicant that has not received funding in the year prior must submit an application to the Department within 60 days of the date that the Department posts a request for applications. Any applicant that has received funding in the year prior must submit an application to the Department within 45 days of the date that the Department posts a request for continuation applications. Each applicant must be a member of a workforce development partnership or education attainment partnership.

2.03 Each application submitted must include, but need not be limited to, the following:

2.03.1 Information concerning:

2.03.1.1 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are members of minority groups;

2.03.1.2 The percentage of adults in the area to be served using grant money who have not completed ninth grade and are not enrolled in or have not completed adult education and literacy programs;

2.03.1.3 The percentage of eligible adults in the area to be served using grant money who do not have a high school diploma or equivalency and who are not currently enrolled in adult education and literacy programs.

2.03.1.4 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are receiving either state or federal public assistance or the percentage of eligible adults in the area to be served who are unemployed workers; and

2.03.2 Information concerning whether the program provided by the applicant would serve populations that are underserved by federal funding;

2.03.3 Whether the adult education provider serves eligible adults who have not completed ninth grade or may otherwise be identified as lowest-level learners;

2.03.4 Information demonstrating that the applicant is an experienced adult education provider with a strong record of providing education, career, and supportive service navigation to assist adult learners in attaining employment, enrolling in postsecondary education, engaging in civic activities, or supporting their own children or children for whom they provide care in achieving academic success and, specifically, success with learners who have not completed ninth grade or may otherwise be identified as lowest-level learners;

2.03.5 A description of the instructional program that the applicant plans to implement using the grant money;

2.03.6 A description of the professional development program that the applicant plans to implement for educators to assist adult students achieve their educational and career goals;

2.03.7 Information demonstrating that the applicant is an active member of a workforce development partnership or an education attainment partnership and a description of services and responsibilities of each of the partnership members;

2.03.8 An explanation of the cost of the instructional and student support program that the applicant plans to implement using the grant money and an explanation of how grant funding will be used to supplement and not supplant any funding currently being used on workforce preparation activities;

2.03.9 The measurable goals of the adult education and literacy program that the applicant expects to achieve using the grant money, including student outcomes identified by the Department such as employment and entrance into postsecondary education or training, and a description of the method that will be used to monitor and evaluate outcomes; and

2.03.10 Any other necessary information, as identified by the Department.

2.04 For initial applications, within 60 days of the date that initial applications for grant funding are due to the Department, the Department will review the applications and develop recommendations for grant funding. Within 45 days of the date that the Department finalizes its recommendations, based on these recommendations and available funding, the State Board must award grants to adult education providers.

2.05 For continuation applications, within 80 days of the date that continuation applications for grant funding are due to the Department, the Department will review the applications. If the Department finds that a grant recipient is not making sufficient progress towards achieving the goals outlined in the provider's initial application, the Department will not continue funding for the grantee.

3.0 Application Evaluation Criteria

3.01 In reviewing grant applications to recommend which applicants should receive grant funding and the amount and duration of each grant, the Department will consider but not be limited to the following criteria:

3.01.1 The quality of the instructional program that the applicant plans to implement using the grant money;

3.01.2 The effectiveness and completeness of the planned partnership;

3.01.3 The cost of the instructional and student support program that the applicant plans to implement using the grant money, including the average cost per eligible adult served by the adult education provider in assisting the eligible adult in attaining additional skills, a high school diploma or an equivalency certificate, postsecondary credentials, employment, or increased capacity to support the academic achievement of the eligible adult's own children or children for whom the eligible adult provides care;

3.01.4 The rigor with which the applicant intends to monitor and evaluate the implementation of the proposed program;

3.01.5 Information concerning:

3.01.5.1 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are members of minority groups;

3.01.5.2 The percentage of eligible adults in the area to be served using grant money who have not completed ninth grade and are not enrolled in or have not completed adult education and literacy programs;

3.01.5.3 The percentage of eligible adults in the area to be served using grant money who do not have a high school diploma or equivalency and who are not currently enrolled in adult education and literacy programs;

3.01.5.4 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are receiving either state or federal public assistance or the percentage of eligible adults in the area to be served who are unemployed workers;

3.01.6 Whether the program provided by the applicant would serve populations that are underserved by federal funding;

3.01.7 Whether the adult education provider serves eligible adults who have not completed ninth grade or may otherwise be identified as lowest-level learner; and

3.01.8 The demonstrated success of the applicant in enabling adults to attain basic literacy, digital literacy, and numeracy skills and in assisting them to attain additional skills, a high school diploma or an equivalency certificate, postsecondary credentials, employment, and increased capacity to support the academic achievement of their own children or children for whom they provide care and, specifically, success with learners who have not completed ninth grade or may otherwise be identified as lowest-level learners.

4.0 Data Collection and Reporting

4.01 Each adult education provider that receives an Adult Education and Literacy Grant shall submit information to the Department. The Department will establish reasonable reporting and documentation requirements for providers. In collecting and reporting this information, the Department must ensure that it adheres to federal and state data privacy laws. In addition to any reporting and documentation requirements established by the Department, grantees also must submit information to the Department describing the following:

4.01.1 The instructional programs and services for which the adult education provider used the grant;

4.01.2 The number of and demographic information, including age, gender, race, ethnicity, native language, zip code, and income, for adult students who enrolled in each of the types of programs and services provided;

4.01.3 The educational progress made by participating students as measured by standardized tests, training completion, and/or credential of value. This includes literacy skills gained by an eligible adult enrolled in an adult education and literacy program;

4.01.4 The nature of the education attainment partnership or workforce development partnership and a description of how this partnership contributed to the success of the program; and

4.01.5 The number of students who are making progress toward the goals of the adult education and literacy program that were specified in the grant application.

Editor's Notes

History

Entire rule emer. rule eff. 09/10/2014; expired 01/08/2015.

Entire rule eff. 01/30/2015.

Entire rule eff. 03/31/2021.

Proposed Amendments to Align to S.B. 23-007

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE ADULT EDUCATION AND LITERACY GRANT PROGRAM

1 CCR 301-98

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

0.0 Statement of Basis and Purpose

The statutory authority for these rules is found in sections 22-10-104 and 22-10-105, C.R.S. The Adult Education and Literacy Act authorizes the Colorado Department of Education to provide state funding for workforce development partnerships through which eligible adults receive basic education in literacy, digital literacy, and numeracy that leads to additional skills acquisition, a high school diploma or an equivalency certificate, postsecondary credential attainment, and employment, or education attainment partnerships that assist adults in attaining basic literacy, digital literacy, and numeracy skills that lead to additional skill acquisition, and may lead to a high school diploma or an equivalency certificate, postsecondary credentials and employment, for the participating adults and their children or the children for whom they provide care.

1.0 Definitions

1.01 "Adult education and literacy programs" mean programs that provide adult basic education, adult education leading to a high school diploma or an equivalency credential, English as a second language instruction, or integrated basic education, digital literacy, and skills training.

1.02 "Adult education provider" means one of the following entities that the Department recognizes as providing appropriate and effective adult education and literacy programs:

(a) a secondary or postsecondary, public or private, nonprofit educational entity, including but not limited to a school district, charter school, board of cooperative services, state institution of higher education, local district college, and area technical college;

(b) a community-based nonprofit agency or organization;

(c) an Indian tribe or nation;

(d) a library;

(e) a literacy council or other literacy institute;

(f) a business or business association that provides adult education and literacy programs either on site or off site;

(g) a volunteer literacy organization;

(h) a local work force board, as defined in section 8-83-203, C.R.S., that oversees a work force development program described in the "Colorado Career Advancement Act";

(i) a one-stop partner, as described in section 8-83-216, C.R.S., under the "Colorado Career Advancement Act"; or

(j) a consortia of entities described in this rule 1.02.

1.03 "Department" means the Department of Education created and existing pursuant to section 24-1-115, C.R.S.

1.04 "Digital literacy" means the skills associated with using technology that enables users to find, evaluate, organize, create, disseminate, and communicate information online.

1.05 "Education attainment partnership" means a collaboration that assists adults in attaining basic literacy, digital literacy, and numeracy skills that lead to additional skill acquisition and may lead to postsecondary credentials and employment. At a minimum, an education attainment partnership must consist of at least one adult education provider that is not listed in rule 1.02(a) that partners with at least one elementary or secondary school or school district, a public or private institution of higher education, a local district college, or an area technical college.

1.0~~5~~6 "Eligible adult" means a person who:

1.0~~5~~6.1 Is at least 17 years of age

1.0~~5~~6.2 Is not enrolled in a public or private secondary school; and

1.0~~5~~6.3

(I) Lacks a high school diploma or its equivalency; or

(II) Is in need of English language instruction; or

(III) Lacks sufficient mastery of the basic literacy, digital literacy, and numeracy skills necessary to enable the person to function effectively in the workplace.

1.0~~6~~7 "English language instruction" means instruction that is designed to assist a person with limited English proficiency to achieve competence in the English language, thus allowing the person to understand and navigate governmental, educational, and workplace systems.

1.0~~7~~8 "Literacy" means a person's ability to read, write, and speak English at levels of proficiency that are necessary to function on the job and in society, achieve the person's goals, and develop the person's knowledge and potential.

1.0~~8~~9 "Numeracy" means a person's ability to compute and solve mathematical problems at levels of proficiency that are necessary to function on the job and in society, achieve the person's goals, and develop the person's knowledge and potential.

1.10~~09~~ "State board" means the State Board of Education created in Section 1 of Article IX of the State Constitution.

1.1~~0~~1 "Workforce development partnership" means a collaboration that assists adults in attaining basic literacy, digital literacy, and numeracy skills leading to additional skill acquisition, postsecondary credentials, and employment. At a minimum, a workforce development partnership must include at least one adult education provider~~, at least one postsecondary education or training provider,~~ and at least one workforce development provider.

~~1.10.1 For purposes of this rule 1.10.1, a postsecondary education or training provider includes, but need not be limited to:~~

~~1.10.1.1 A state institution of higher education, local district college, or area technical college;~~

~~1.10.1.2 An apprenticeship program;~~

~~1.10.1.3 An entity that provides accelerated education and skills training certificate programs created pursuant to Part 9 of Article 60 of Title 23, C.R.S.~~

~~1.10.1.4 An entity that operates programs through the manufacturing career pathway pursuant to part 10 of article 60 of title 23, C.R.S., or another career pathway pursuant to section 24-46.3-104, C.R.S.; and~~

~~1.10.1.5 A community-based workforce development program that is operated through the Colorado customized training program created in Section 23-60-306, C.R.S.~~

1.11.10.2 For purposes of this rule 1.11.10.2, a workforce development provider includes, but need not be limited to:

1.11.10.2.1 A work force development program described in the "Colorado Career Advancement Act," Part 2 of Article 83 of Title 8, C.R.S.; and

1.11.10.2.2 A program that is supported by the state workforce development council created in Article 46.3 of Title 24, C.R.S.

2.0 Application Requirements and Timeline

2.01 Grants will be awarded through a competitive application process. Funding will be subject to funding appropriations and grant recipients' annual demonstration of adequate progress toward achieving the goals of the adult education and literacy program that were specified in the grant application.

2.02 Any adult education provider interested in obtaining grant funding must submit an Adult Education and Literacy Grant application to the Department, using the application form provided by the Department. Any applicant that has not received funding in the year prior must submit an application to the Department within 60 days of the date that the Department posts a request for applications. Any applicant that has received funding in the year prior must submit an application to the Department within 45 days of the date that the Department posts a request for continuation applications. Each applicant must be a member of a workforce development partnership or education attainment partnership.

2.03 Each application submitted must include, but need not be limited to, the following:

2.03.1 Information concerning:

2.03.1.1 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are members of minority groups;

2.03.1.2 The percentage of adults in the area to be served using grant money who have not completed ninth grade and are not enrolled in or have not completed adult education and literacy programs;

2.03.1.3 The percentage of eligible adults in the area to be served using grant money who do not have a high school diploma or equivalency and who are not currently enrolled in adult education and literacy programs; and

2.03.1.4 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are receiving either state or federal public assistance or the percentage of eligible adults in the area to be served who are unemployed workers; ~~and~~

2.03.2 Information concerning whether the program provided by the applicant would serve populations that are underserved by federal funding;

2.03.3 Whether the adult education provider serves eligible adults who have not completed ninth grade or may otherwise be identified as lowest-level learners;

2.03.4 Information demonstrating that the applicant is an experienced adult education provider with a strong record of providing education, career, and supportive service navigation to assist adult learners in attaining employment, enrolling in postsecondary education, engaging in civic activities, or supporting their own children or children for whom they provide care in achieving academic success and, specifically, success with learners who have not completed ninth grade or may otherwise be identified as lowest-level learners;

2.03.5 A description of the instructional program that the applicant plans to implement using the grant money;

2.03.6 A description of the professional development program that the applicant plans to implement for educators to assist adult students achieve their educational and career goals;

2.03.7 Information demonstrating that the applicant is an active member of a workforce development partnership or an education attainment partnership and a description of services and responsibilities of each of the partnership members;

2.03.8 An explanation of the cost of the instructional and student support program that the applicant plans to implement using the grant money and an explanation of how grant funding will be used to supplement and not supplant any funding currently being used on workforce preparation activities;

2.03.9 The measurable goals of the adult education and literacy program that the applicant expects to achieve using the grant money, including student outcomes identified by the Department such as employment and entrance into postsecondary education or training, and a description of the method that will be used to monitor and evaluate outcomes; and

2.03.10 Any other necessary information, as identified by the Department.

2.04 For initial applications, ~~W~~within 60 days of the date that initial ~~or continuation~~ applications for grant funding are due to the D~~d~~epartment, the D~~d~~epartment will review the applications and develop recommendations for grant funding. ~~For continuation applications, if the department finds that a grant recipient is not making sufficient progress towards achieving the goals outlined in the provider's initial application, the department will recommend that funding not be continued for the grantee.~~ Within 45 days of the date that the Department finalizes its recommendations, based on these recommendations and available funding, the State Board must award grants to adult education providers.

2.05 For continuation applications, within 80 days of the date that continuation applications for grant funding are due to the Department, the Department will review the applications. If the Department finds that a grant recipient is not making sufficient progress towards achieving the goals outlined in the provider's initial application, the Department will not continue funding for the grantee.

3.0 Application Evaluation Criteria

3.01 In reviewing grant applications to recommend which applicants should receive grant funding and the amount and duration of each grant, the Department will consider but not be limited to the following criteria:

3.01.1 The quality of the instructional program that the applicant plans to implement using the grant money;

3.01.2 The effectiveness and completeness of the planned partnership;

3.01.3 The cost of the instructional and student support program that the applicant plans to implement using the grant money, including the average cost per eligible adult served by the adult education provider in assisting the eligible adult in attaining additional skills, a high school diploma or an equivalency certificate, postsecondary credentials, employment, or increased capacity to support the academic achievement of the eligible adult's own children or children for whom the eligible adult provides care;

3.01.4 The rigor with which the applicant intends to monitor and evaluate the implementation of the proposed program;

3.01.5 Information concerning:

3.01.5.1 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are members of minority groups;

3.01.5.2 The percentage of eligible adults in the area to be served using grant money who have not completed ninth grade and are not enrolled in or have not completed adult education and literacy programs;

3.01.5.3 The percentage of eligible adults in the area to be served using grant money who do not have a high school diploma or equivalency and who are not currently enrolled in adult education and literacy programs;

3.01.5.4 The percentage of eligible adults expected to be enrolled in the adult education and literacy programs funded by the grant who are receiving either state or federal public assistance or the percentage of eligible adults in the area to be served who are unemployed workers;

3.01.6 Whether the program provided by the applicant would serve populations that are underserved by federal funding; ~~and~~

3.01.7 Whether the adult education provider serves eligible adults who have not completed ninth grade or may otherwise be identified as lowest-level learners; and

3.01.8 The demonstrated success of the applicant in enabling adults to attain basic literacy, digital literacy, and numeracy skills and in assisting them to attain additional skills, a high school diploma or an equivalency certificate, postsecondary credentials, employment, and increased capacity to support the academic achievement of their own children or

children for whom they provide care and, specifically, success with learners who have not completed ninth grade or may otherwise be identified as lowest-level learners.

4.0 Data Collection and Reporting

4.01 Each adult education provider that receives an Adult Education and Literacy Grant shall submit information to the Department. The Department will establish reasonable reporting and documentation requirements for providers. In collecting and reporting this information, the Ddepartment must ensure that it adheres to federal and state data privacy laws. ~~Upon completing an adult education and literacy program funded, in whole or in part, by an Adult Education and Literacy grant, grantees must submit information concerning the state-funded program that the department specifically requests from the information required by Title II of the "Workforce Innovation and Opportunity Act," as amended, 29 U.S.C. sec. 3101 et seq., for federally funded programs.~~ In addition to any reporting and documentation requirements established by the Department, g~~G~~rantees also must submit information to the Department describing the following:

4.01.1 The instructional programs and services for which the adult education provider used the grant;

4.01.2 The number of and demographic information, including age, gender, race, ethnicity, native language, zip code, and income, for adult students who ~~participated~~ enrolled in each of the types of programs and services provided;

4.01.3 The educational progress made by participating students as measured by standardized tests, training completion, and/or credential of value. This includes literacy skills gained by an eligible adult enrolled in an adult education and literacy program;

4.01.4 The nature of the education attainment partnership or workforce development partnership and a description of how this partnership contributed to the success of the program; and

4.01.5 The number of students who are making progress toward the goals of the adult education and literacy program that were specified in the grant application.

Editor's Notes

History

Entire rule emer. rule eff. 09/10/2014; expired 01/08/2015.

Entire rule eff. 01/30/2015.

Entire rule eff. 03/31/2021.

Notice of Proposed Rulemaking

Tracking number

2023-00612

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-3

Rule title

FINANCIAL ISSUES

Rulemaking Hearing

Date

10/16/2023

Time

11:00 AM

Location

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

Subjects and issues involved

The purpose of this regulation is to provide the requirements for insurers to participate in and complete the National Association of Insurance Commissioners (NAIC) Insurer Climate Risk Disclosure Survey.

Statutory authority

§§ 10-1-109(1), and 10-3-244(1), C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

3 CCR 702-3

FINANCIAL ISSUES

DRAFT Proposed New Regulation 3-1-18

CONCERNING THE CLIMATE RISK DISCLOSURE SURVEY

Section 1 Authority

This regulation is being promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), and 10-3-244(1), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide the requirements for insurers to participate in and complete the National Association of Insurance Commissioners (NAIC) Insurer Climate Risk Disclosure Survey.

Section 3 Applicability

This regulation applies to all insurers issued a certificate of authority to transact business pursuant to §§ 10-3-101 to 10-3-131, C.R.S., that report more than 100 million dollars on their annual NAIC Schedule T Filings as of January 1, 2023.

Section 4 Definitions

A. "Group" shall mean, for the purposes of this regulation, those insurers and affiliates that are included within an insurance holding company system, as defined in § 10-3-801(5), C.R.S.

B. "Insurer" shall have the same meaning as found at § 10-3-801(6), C.R.S.

C. "NAIC" shall have the same meaning as found at § 10-3-801(7), C.R.S.

D. "Schedule T Filing" shall mean, for the purpose of this regulation, the NAIC convention blank form, Schedule T "Exhibit of Premiums Written and Allocated by States and Territories", to be filed by insurers as part of their annual statement with NAIC required by Colorado Insurance Regulation 3-1-10.

Section 5 Rules

A. On or before August 31, 2024, and each year thereafter, insurers shall submit a completed "NAIC Climate Risk Disclosure Survey" ("Survey") to the California Department of Insurance as directed on the Department's website.

B. Insurers are expected to address the content of the entire Survey to the best of their ability.

C. Insurers subject to this regulation, as defined in Section 3, that are within the same group with similar policies and practices and whose answers would not be materially different from each other may submit uniform group responses. When submitting group responses, insurers must check the premium amounts for each individual company in the group and submit a Survey response for each company issued a certificate of authority to transact business pursuant to Sections 10-3-101 to 10-3-131, C.R.S. with more than 100 million dollars in direct written premium nationwide.

D. Insurers that are required to respond to the Survey by one of the partner states and jurisdictions are only required to submit the Survey once.

Section 6 Severability

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

Section 7 Enforcement

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

Section 8 Effective Date

This regulation shall become effective on December 15, 2023.

Section 9 History

New regulation effective December 15, 2023.

Notice of Proposed Rulemaking

Tracking number

2023-00608

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

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

Rulemaking Hearing

Date

10/16/2023

Time

11:00 AM

Location

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

Subjects and issues involved

The purpose of this regulation is to implement SB23-284 and ensure carriers offering health benefit plans or pharmacy benefit managers acting on behalf of carriers are providing coverage for contraception in accordance with the Public Health Service Act, as amended by the Affordable Care Act, and clarified in federal guidance from the U.S. Departments of Health and Human Services, Labor, and the Treasury.

Statutory authority

§§ 10-16-109 and 10-16-104.2, C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed New Regulation 4-2-95

CONTRACEPTIVE BENEFIT REQUIREMENTS FOR HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-16-109 and 10-16-104.2, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to implement SB23-284 and ensure carriers offering health benefit plans or pharmacy benefit managers acting on behalf of carriers are providing coverage for contraception in accordance with the Public Health Service Act, as amended by the Affordable Care Act, and clarified in federal guidance from the U.S. Departments of Health and Human Services, Labor, and the Treasury.

Section 3 Applicability

The requirements and provisions of this regulation apply to carriers and pharmacy benefit management firms acting on behalf of carriers offering non-grandfathered individual, small group, and/or large group health benefit plans and student health insurance coverage. This regulation does not apply to grandfathered health benefit plans.

Section 4 Definitions

A. "Affordable Care Act" means, for the purposes of this regulation, The Patient Protection and Affordable Care Act, Pub. L.111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L 111-152.

B. "Carrier" means a carrier, as defined in § 10-16-102(8), C.R.S., offering a health benefit plan and shall include a pharmacy benefit manager acting on behalf of the carrier.

C. “Contraceptive” or “contraception” shall have the same meaning as defined in § 2-4-401(1.5), C.R.S.

D. “Dispensing entity” shall have the same meaning as defined in § 10-16-104.2(1)(c), C.R.S.

E. “Emergency contraception” means a drug approved by the FDA that prevents pregnancy after sexual intercourse, including, but not limited to, oral contraceptive pills; except that “emergency contraception” shall not include RU-486, mifepristone, or any other drug or device that induces a medical abortion, in accordance with § 25-3-110, C.R.S.

F. “Expedited exception request” means, for the purposes of this regulation, a coverage determination no later than twenty-four (24) hours following the carrier’s receipt of the request.

G. “Food and Drug Administration” or “FDA” means, for the purposes of this regulation, the Food and Drug Administration in the United States Department of Health and Human Services.

H. “Grandfathered health benefit plan” shall have the same meaning as defined in § 10-16-102(31), C.R.S.

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

J. “Health Resources and Services Administration” or “HRSA” means, for the purposes of this regulation, the Health Resources and Services Administration in the United States Department of Health and Human Services.

K. “Health care provider,” or “provider” shall have the same meaning as defined in § 10-16-102(56), C.R.S.

L. “Out-of-pocket costs” means, for the purposes of this regulation, the amount a covered person is required to pay in the form of deductibles, copayments, or coinsurance. Out-of-pocket costs do not include premium.

M. “Pharmacy benefit management firm,” “pharmacy benefit manager,” or “PBM” shall have the same meaning as defined in § 10-16-102(49), C.R.S.

N. “Prescription drug” shall have the same meaning as defined in § 12-280-103(42), C.R.S.; except that the term includes only prescription drugs that are intended for human use.

O. “Prior authorization” shall have the same meaning as defined in § 10-16-112.5(7)(d), C.R.S.

P. “SERFF” means, for the purposes of this regulation, the NAIC System for Electronic Rate and Form Filing.

Q. “Step therapy” or “fail first” shall have the same meaning as defined in § 10-16-145(1)(g), C.R.S.

R. “Therapeutic equivalent” shall have the same meaning as defined in § 12-280-103(52), C.R.S.

Section 5 Rules

A. Carriers shall cover all FDA-approved, cleared, or granted contraception, whether or not the item or service is identified in the current FDA Birth Control Guide, and contraceptive care outlined in the HRSA Women’s Preventive Services Guidelines as a preventive care service without consumer cost sharing in accordance with the requirements found in Section 2713 of the Public

Health Service Act, as added by the Affordable Care Act. These forms of contraception include over-the-counter emergency contraception with a prescription and elective sterilization procedures for people who menstruate.

B. Carriers shall cover, without cost sharing, items and services that are integral to the furnishing of an FDA-approved, cleared or granted contraceptive or contraceptive care, regardless of whether the item or service was billed separately. This coverage must include the clinical services and patient education and counseling needed for provision of the contraceptive product or service and any follow-up care, including laboratory tests integral to the furnishing of an FDA-approved, cleared, or granted contraceptive.

C. If the attending health care provider, in their reasonable professional judgment, determines that the use of an alternative contraceptive, whether that contraceptive is on the carrier's formulary or not, is medically necessary with respect to a covered person, the health care provider's determination shall be final, and a carrier must cover the contraceptive without prior authorization, step therapy, or cost-sharing. If a carrier requires a written request for contraceptives not currently on the plan's prescription drug formulary, the carrier shall use the standard exception form included in Appendix A and make such form available in paper and electronic format to providers and enrollees with other information regarding the exception process and with other plan materials.

D. A carrier that receives an exception request for an alternative contraceptive on the formulary or a non-formulary contraceptive shall consider that request as an expedited exception request and shall respond in no more than twenty-four (24) hours following the carrier's receipt.

E. Carriers are prohibited from requiring prior authorization, step therapy, or other utilization management practices as a prerequisite to covering a contraception, whether that contraceptive is on the carrier's formulary or not, that the covered person's health care provider has determined is medically necessary with respect to the covered person. Carriers are specifically prohibited from:

1. Requiring prior authorization or denying coverage for a single-source brand name contraceptive with no therapeutic or pharmaceutical equivalent if the covered person's health care provider determines the product is medically necessary with respect to that person.

2. Requiring a covered person to undergo step therapy using numerous other FDA-approved, cleared, or granted contraceptive products within the same contraceptive category prior to coverage if the person's health care provider determines the product is medically necessary with respect to that person.

3. Requiring a covered person to undergo step therapy using numerous other FDA-approved, cleared, or granted contraception in other contraceptive categories prior to coverage if the person's health care provider determines the product is medically necessary with respect to that person.

4. Imposing age limits on contraceptive coverage.

5. Imposing quantity or fill limits on contraceptives that are not based on the clinical evidence base or that result in a covered person receiving less than a twelve-months' supply of a contraceptive.

F. Carriers shall reimburse a provider or in-network dispensing entity for the single dispensing or furnishing of a contraceptive intended to last for a duration of twelve months, dispensed or furnished at one time.

G. Carriers shall cover without cost sharing over-the-counter (OTC) oral and emergency contraception without a prescription. Carriers are required to cover these products without cost sharing including when they are prescribed for advanced provision.

Section 6 Carrier Reporting

Carriers shall report annually to the Commissioner data relating to contraception coverage in the previous calendar year. Such data shall be due to the Division on April 1, 2024, and on April 1 each year thereafter, and shall include, in a template provided in SERFF:

A. The number of requests for contraceptives, including the number of claims approved and denied and:

1. The name, strength, quantity, and days supply of the FDA-approved contraception prescribed;

2. Whether prior authorization or step therapy were required; and

3. Whether the claim was approved or denied and the reason that the carrier or pharmacy benefit manager denied each claim.

B. The number of requests for a twelve-month supply of contraceptives, including the number of claims approved and denied for a twelve-month supply and:

1. The name, strength, quantity, and days supply of the FDA-approved contraceptive prescribed;

2. Whether prior authorization or step therapy were required; and

3. Whether the claim was approved or denied and the reason that the carrier or pharmacy benefit manager denied each claim.

C. The number of requests for over-the-counter contraceptives, including the number of claims approved and denied and the reason that the carrier denied the claims.

D. The number of requests for an alternative contraceptive that is not otherwise included in the formulary or available without cost sharing, including the number of claims approved and denied and the reason that the carrier or pharmacy benefit management firm denied the claims.

E. The number of claims for contraception for which a member was required to pay out-of-pocket costs and the dollar amounts paid toward those claims.

F. The types of FDA-approved contraceptives requested by a patient or their provider that are not otherwise including on the carrier's formulary or available without cost-sharing;

G. The minimum, mean, and maximum length of time for a carrier or pharmacy benefit manager to approve an exception request by a covered person's provider.

H. Claims data of the ancillary services associated with a contraceptive (e.g., anesthesia for sterilization, pregnancy tests for intrauterine device insertion) and associated Current Procedural Terminology (CPT) codes, including the number of claims approved and denied and the reason that the carrier or pharmacy benefit manager denied the claims.

Section 7 Incorporation by Reference

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

Section 8 Severability

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

Section 9 Enforcement

Noncompliance with this emergency 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 revocations of license, subject to the requirements of due process.

Section 10 Effective Date

This regulation shall become effective on December 15, 2023.

Section 11 History

New regulation effective December 15, 2023.

Appendix A: Standard Exemption Form for Contraceptive Products

REQUEST FOR AN ALTERNATIVE CONTRACEPTION DRUG, DEVICE, OR PROUDUCT FOR PATIENTS COVERED UNDER A COLORADO HEALTH BENEFIT PLAN
(other than self-funded ERISA coverage, Medicaid, Medicare, and TRICARE)

Carriers must cover a non-formulary contraceptive drug, device, or product without cost-sharing upon the recommendation of the patient's health care provider.

If the carrier, or pharmacy benefit management firm acting on behalf of a health benefit plan, requires a written request for a non-formulary contraceptive drug, device, or product, the provider must complete this form and send it to the patient's health benefit plan to obtain coverage of a contraceptive drug, device, or product that is not on the plan's prescription drug formulary, but is determined to be medically necessary for the patient by the provider.

Patient Information		
Name		**Date of Birth**
Address		
City	**State**	**Zip Code**
Health Insurer Name	**Patient's Member ID #**	

Attending Health Care Provider Information		
Name		
Address		
City	**State**	**Zip Code**
Office Phone	**Fax**	
Tax ID # / NPI # (if available)	**Facility Name (if applicable)**	

Office Point of Contact	Preferred Contact Method

Alternative Contraceptive Drug, Device, or Product Request (to be completed by the attending health care provider)

The covered therapeutic and pharmaceutical equivalent versions of a contraceptive drug, device, or product are: (check one)

☐ Not available; OR

☐ Deemed medically inappropriate

Requested Alternative Contraceptive Drug, Device or Product: (complete applicable items)
I, the patient's attending health care provider, in my reasonable professional judgment, have determined that the use of the non-covered therapeutic or pharmaceutical equivalent of a contraceptive drug, device, or product listed below is warranted.

Contraceptive Drug/Device/Product Name	Strength	Quantity per Month
J-code	Units Requested[1]	Proposed Date of Service
☐ Check if a generic equivalent may be substituted for the requested contraceptive drug, device, or product.		

Exception Request

NOTE: Per Colorado law, a carrier that receives this exception request for a non-formulary contraceptive shall consider that request as an expedited exception request and must respond within 24 hours following receipt of this request. Carriers are prohibited from requiring a covered person, a person's authorized representative, or an individual's provider to appeal an adverse benefit determination for a contraceptive using the carrier's internal claims and appeals process.

Signature

I certify that the information provided in this form is accurate to the best of my knowledge.

Health Care Provider's Signature	Date

1 Pursuant to section § 10-16-104.2, Colorado Revised Statute, carriers must reimburse a participating provider for prescription contraceptives intended to last for a 12-month period.

Send the completed form to:

Fax Number:
[Insert carrier fax number(s)]

Email:
[Insert carrier email address for exemptions requests]

Notice of Proposed Rulemaking

Tracking number

2023-00599

Department

700 - Department of Regulatory Agencies

Agency

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

CCR number

3 CCR 716-1

Rule title

NURSING RULES AND REGULATIONS

Rulemaking Hearing

Date

10/25/2023

Time

09:30 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Board of Nursing will hold a Rulemaking Hearing on October 25, 2023, at 9:30 A.M. to receive testimony before the Board determines whether to approve revisions to Rules 1.14 and 1.15 and whether to repeal Rules 1.33 and 1.34 on a permanent basis to implement Colorado Senate Bills 23-188 and 23-265.

Please register to attend by using the link below:

https://us06web.zoom.us/webinar/register/WN_tXapeQY3SXGeF4yWQ0rJbw

Statutory authority

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

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DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - State Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

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1.14 RULES AND REGULATIONS TO REGISTER PROFESSIONAL NURSES QUALIFIED TO ENGAGE IN ADVANCED PRACTICE REGISTERED NURSING

A. **BASIS:** The authority for the promulgation of these rules and regulations by the State Board of Nursing ("Board") is set forth in sections 12-20-202(3), 12-20-204(1), 12-255-107(1)(e) and (j), 12-255-111, and 12-255-113, C.R.S.

B. **PURPOSE:** These Rules are adopted to implement the Board's authority to register professional nurses qualified to engage in Advanced Practice Registered Nursing and are further adopted to set forth the requirements and procedures for being so registered.

C. **DEFINITIONS**

1. Accrediting Body: Any organization that establishes and maintains standards for professional nursing programs and recognizes those programs that meet these standards and is a National Nursing Accreditation Agency that is recognized by the U.S. Department of Education (USDE) and/or the Council for Higher Education Accreditation (CHEA).

2. Advanced Practice Registered Nurse (APRN): A master's prepared nurse holding a graduate degree in advanced practice registered nursing who has completed a graduate or post-graduate program of study in an advanced practice Role and/or Population Focus, in an accredited advanced practice registered nursing program and has been recognized and included on the Advanced Practice Registry (APR) by the Board. APRN Roles recognized by the Board are nurse practitioner (NP), certified registered nurse anesthetist (CRNA), certified nurse midwife (CNM) and clinical nurse specialist (CNS). A nurse seeking recognition as an APRN must be academically prepared for the expanded scope of practice described as Advanced Practice Registered Nursing.

3. Advanced Practice Registered Nursing: The expanded scope of nursing practice in an advanced Role and/or Population Focus approved by the Board.

4. Advanced Practice Registry (APR): The Board's registry of those professional nurses who apply for, and meet the criteria for inclusion as established in accordance with section 12-255-111, C.R.S., and Rule 1.14.

5. Applicant: A professional nurse seeking inclusion on the APR as an APRN.

6. Board: The State Board of Nursing.

7. Certifying Body: A non-governmental agency approved by the Board that validates by examination, based on pre-determined standards, an individual nurse's qualifications and knowledge for practice in a defined functional or clinical area of nursing.

8. Client: A person receiving nursing care.

9. Independent Practice: The practice of advanced practice registered nursing as defined in section 12-255-104(8), C.R.S. for which the APRN is solely responsible and performs on his/her own initiative, and which occurs in a setting for which no exception as set forth in Section (E)(2) of Rule 1.14 applies.

10. Population Focus: A broad, population-based focus of study encompassing the common problems of that group of patients and the likely co-morbidities, interventions and response to those problems. Examples include, but are not limited to: Neonatal, Pediatric, Women's Health, Adult, Family, Mental Health, etc. A Population Focus is not defined as a specific disease/health problem or specific intervention.

11. Role: The advanced practice area or position for which the professional nurse has been prepared; Nurse Practitioner (NP) Certified Registered Nurse Anesthetist (CRNA), Certified Nurse Midwife (CNM) and Clinical Nurse Specialist (CNS).

12.

Deleted: Unencumbered: No pending disciplinary action or current restriction to practice in the state of Colorado.¶

D. REQUIREMENTS FOR INCLUSION ON THE ADVANCED PRACTICE REGISTRY

1. A professional nurse may request inclusion on the APR by original registration or by endorsement.

2. Applicants must possess an active, Colorado or multi-state compact professional nurse license.

Deleted: unencumbered

3. Submit an APR application in a manner approved by the Board.

4. Original registration

   a. Educational Requirements: The successful completion of a graduate or post-graduate nursing degree in the Role and, where applicable, the Population Focus, or equivalent as determined by the Board, for which the Applicant seeks inclusion on the APR. Verification of educational requirements shall be evidenced by receipt of either an official transcript from a graduate or post-graduate APRN program accredited by a nursing Accrediting Body, or by proof of a current national certification from a nationally recognized accrediting agency, as approved by the Board, in the appropriate role and population focus the applicant intends to practice. The transcript shall verify date of graduation, credential conferred, and Population Focus of the program.

   b. Certification Requirements

      (1) Certification requirements for Certified Registered Nurse Anesthetist (CRNA): A CRNA must pass the national certification examination as administered by the Council on Certification of Nurse Anesthetists.

Verification of current certification or recertification from the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists, as may be appropriate, shall be submitted by the applicant as part of the application process, or in another manner approved by the Board.

(2) Certification Requirements for Certified Nurse-Midwife (CNM): A CNM must meet the standards for education and certification established by the American College of Nurse-Midwives American Midwifery Certification Board (AMCB) formerly known as ACNM Certification Council (ACC, Inc.). Verification of current AMCB certification shall be submitted by the applicant as part of the application process, or in another manner approved by the Board.

(3) Certification requirements for Nurse Practitioner (NP): A NP must meet the standards for education and certification established by a national certifying body approved by the Board. Verification of current certification or recertification, as may be appropriate, shall be submitted by the applicant as part of the application process, or in another manner approved by the Board.

(4) Certification requirements for Clinical Nurse Specialist (CNS): A CNS must meet the standards for education and certification established by a national certifying body approved by the Board. Verification of current certification or recertification, as may be appropriate, shall be submitted by the applicant as part of the application process, or in another manner approved by the Board.

5. Registration by Endorsement

a. Pursuant to the Occupational Credential Portability Program under section 12-20-202(3), C.R.S., a professional nurse is entitled to be included on the advanced practice registry by endorsement if:

(1) The professional is currently in the advanced practice registry or is recognized as an advanced practice nurse in good standing in another state or US territory or through the federal government, or holds a military occupational specialty, as defined in section 24-4-201, C.R.S., and has submitted satisfactory proof under penalty of perjury that:

(a) The professional nurse

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

(ii) Has held for at least one year a current and valid registration or recognition as an advanced practice nurse in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for

advanced practice nurses as specified in Article 255 of Title 12, C.R.S., and these Rules

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

(2) The Board may deny inclusion in the registry if:

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

(i) Lacks the requisite substantially equivalent education, experience, or credentials for a inclusion in the registry; or

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

b. A professional nurse may be included on the advanced practice registry by endorsement if:

(1) The professional nurse holds active national certification, as described in Section (D)(4)(d) above, in the Role and, where applicable, the Population Focus for which the Applicant seeks inclusion on the APR and possesses an appropriate graduate degree as determined by the board. Verification of current certification or recertification, as may be appropriate, shall be submitted by the applicant as part of the application process or in another manner approved by the Board.

(2) For purposes of Section (D)(5)(a)(2) of Rule 1.14, an appropriate graduate degree requires verification evidenced by either receipt of an official transcript from a graduate or post-graduate Advanced Practice Registered Nursing program accredited by a nursing Accrediting body. Upon petition by the applicant, and with due consideration of the need to protect the public, the Board may accept an alternative graduate degree in support of endorsement under Section (D)(5)(a)(2) of Rule 1.14. It is anticipated that such alternative graduate degree will rarely be used. The decision to accept an alternative graduate degree is at the sole discretion of the Board.

(3) Advanced practice credentials issued by the United States Military are deemed to be substantially equivalent to advanced practice authority in another state or jurisdiction.

6. Registration of Additional Population Focuses for Advanced Practice Registration

a. Submit an APR application on the current Board approved form and submit required fees.

b. Successful completion of a graduate or post-graduate nursing degree in the Role and, where applicable, the Population Focus, or equivalent as determined by the Board, for which the Applicant seeks inclusion on the APR. Verification of educational requirements shall be evidenced by either receipt of an official transcript from a graduate or post-graduate Advanced Practice Registered Nursing program accredited by a nursing Accrediting Body, or by proof of a current national certification from a nationally recognized accrediting agency, as approved by the Board, in the appropriate role and population focus the applicant intends to practice. The transcript shall verify date of graduation, credential conferred, and Population Focus of the program.

c. Verification of active certification in the Role and, where applicable, the Population Focus, or equivalent as determined by the Board, for which the Applicant seeks inclusion on the APR shall be submitted by the applicant as part of the application process, or in another manner approved by the Board.

E. REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE

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

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

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

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

   c. An APRN who provides uncompensated health care; or

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

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

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

F. SCOPE OF ADVANCED PRACTICE REGISTERED NURSING

1. An APRN shall practice in accordance with the standards of the appropriate national professional nursing organization and have a safe mechanism for consultation or collaboration with a physician or, when appropriate, referral to a physician. Advanced practice registered nursing also includes, when appropriate, referral to other health care providers.

2. The scope of Advanced Practice Registered Nursing is based on:

   a. The professional nurse's scope of practice within the APRN's Role and Population Focus;

   b. Graduate or post-graduate nursing education in the Role and/or Population Focus for which the APRN has been recognized by the Board for inclusion on the APR.

3. The scope of Advanced Practice Registered Nursing may include, but is not limited to: performing acts of advanced assessment, diagnosing, treating, prescribing, ordering, selecting, administering, and dispensing diagnostic and therapeutic measures.

4. Prescribing medication is not within the scope of practice of an APRN unless the APRN has applied for and been granted Prescriptive Authority by the Board.

G. WITHDRAWAL OF ADVANCED PRACTICE REGISTRATION

1. An APRN may request to voluntarily withdraw the nurse's registration as an APRN in each Role and/or Population Focus in which the nurse was granted inclusion on the APR by the Board.

2. The Board may withdraw an APRN's registration from the APR in one or more of the Roles/Specialties or Population Foci in which the APRN was granted recognition, if the APRN no longer meets the requirements for inclusion on the APR or the APRN is subject to discipline under section 12-255-120, C.R.S., in accordance with the procedures set forth in section 12-255-119, C.R.S.

H. RENEWAL AND REINSTATEMENT OF ADVANCED PRACTICE REGISTRATION

1. Renewal of an APRN's registration on the APR is required at the time of the APRN's Colorado professional nurse license renewal. Multi-state compact licensed professional nurses granted inclusion on the APR shall be required to renew their registration every two years and the registration shall be issued with a specific expiration date.

2. An APRN who has failed to timely renew the APRN registration may apply to reinstate such registration. The nurse shall submit an application on the current Board approved application forms, pay the current application fee, and submit required documentation as set forth in Section (D) of Rule 1.14 for each Role and/or Population Focus in which the applicant wishes to practice Advanced Practice Registered Nursing.

3. The Applicant may be required to demonstrate continued competency by:

a. Meeting the requirements to maintain certification by a Certifying Body, or

b. Petitioning the Board with an alternative method of establishing competency.

4. Reinstatement of an APRN's registration following disciplinary action requires compliance with all requirements set forth in Section (D) of Rule 1.14 and any requirements set forth by the Board.

5. An APN who was included in the APR as of June 30, 2008, but had not successfully completed the educational requirements as set forth in section 12-255-111(3)(a), C.R.S., will meet the education requirements set forth in (D)(4)(a) or (D)(5)(b) of Rule 1.14.

6. An APN who was included in the APR as of June 30, 2010, has not obtained national certification as set forth in section 12-255-111(4)(b), C.R.S., will meet the certification requirements set forth in Section (D)(2) of Rule 1.14.

I. **DISCIPLINE OF ADVANCED PRACTICE REGISTERED NURSES**

1. APRN disciplinary procedures shall be the same as set forth in sections 12-255-119 and 12-255-120, C.R.S.

Adopted: April 28, 2010 5
Effective: July 1, 2010
Revised: July 26, 2017
Effective: September 14, 2017
Revised: October 27, 2021
Effective: December 30, 2021

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

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

B. PURPOSE: Section 12-255-112(4), C.R.S. sets forth the legal requirements for an Advanced Practice Registered Nurse (APRN) to obtain prescriptive authority in Colorado. First, the APRN must obtain Provisional Prescriptive Authority. Generally, those requirements are:

1. Completion of the appropriate graduate degree or post-graduate degree or certificate, as determined by the Board, in the advanced practice Role and, if applicable, Population Focus;

2. Satisfactory completion of educational requirements, as determined by the Board, in the use of controlled substances and prescription drugs;

3. National certification by a nationally recognized certifying body, as determined by the Board, in the Role and, if applicable, Population Focus of the APRN, unless the Board grants an exception; and

4. Completion of at least three years of combined clinical work experience as a professional nurse and/or as an APRN.

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

5. Complete a 750 hour Mentorship with a Physician or an Advanced Practice Registered Nurse with Full Prescriptive Authority and experience in prescribing medications. The Physician or APRN shall have education, training, experience and a practice that corresponds with but need not be identical to the Role and, if applicable, Population Focus of the RXN-P.

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

The purpose of these Rules is to further clarify each of the statutory requirements, with the exception of professional liability insurance, which can be found in Rule 1.14 of the Board's Rules and Regulations. These Rules apply only to prescribing authority and should not be construed to govern other relationships between APRNs and health care providers in other situations.

C. DEFINITIONS

1. Accrediting Agency: An organization that establishes and maintains standards for professional nursing programs and recognizes those programs that meet these standards and is recognized by US Department of Education (USDE) and/or the Council for Higher Education Accreditation (CHEA), including the Commission on Collegiate Nursing Education (CCNE), Accreditation Commission for Education in Nursing (ACEN), Council on Accreditation of Nurse Anesthesia Educational Programs (COA), and Accreditation Council for Midwifery Education.

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

3. Advanced Practice Registry (APR): The Board's record of those professional nurses who are granted APRN status by the Board in accordance with section 12-255-111, C.R.S. and Rule 1.14 of the Board's Rules and Regulations.

4. Applicant: An APRN seeking Provisional Prescriptive Authority in the same Role and, if applicable, Population Focus for which the APRN was recognized on the APR.

5. Board: The State Board of Nursing.

6. Certifying Body: A non-governmental agency approved by the Board that validates by examination, based on pre-determined standards, an individual nurse's qualifications and knowledge for practice in a defined APRN Role and, if applicable, Population Focus.

7. Clinical Work Experience: Any relevant experience accumulated as a professional nurse or an advanced practice registered nurse, including paid or unpaid work experience, volunteer work, or student work. The gratuitous care of friends or members of the family is not included in Clinical Work Experience.

8. DEA: Drug Enforcement Administration.

9. Disciplinary Sanction: Any current restriction, limitation, encumbrance or condition on the Physician Mentor's medical license or on the RXN Mentor's nursing license, including confidential participation in peer health assistance or an alternative to discipline program authorized by the Mentor's licensing board.

10. Full Prescriptive Authority: The authority granted to the RXN to prescribe medications upon completion of the requirements set forth in Section (F)(2) of Rule 1.15.

11. Mentor: Physician Mentor: A person who holds a license to practice medicine in Colorado or a physician who is otherwise exempted from licensure pursuant to section 12-240-107(3)(i), C.R.S. The physician's license must be in good standing without Disciplinary Sanction as defined in Section (C)(9) of Rule 1.15. The Physician Mentor must be actively practicing medicine in the State of Colorado and shall have education, training, experience and a practice that corresponds with but need not be identical to the Role and, if applicable, Population Focus of the RXN-P. The Physician Mentor must also have an unrestricted DEA registration.

12. Mentor: RXN Mentor: A professional nurse who has met the qualifications for an APRN, is included on Colorado's APR, has Full Prescriptive Authority in Colorado, and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The RXN Mentor's nursing license must be without Disciplinary Sanction as defined in Section (C)(9) of Rule 1.15. The RXN Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds with, but need not be identical to, the Role and, if applicable, Population Focus of the RXN-P. The RXN Mentor must have an unrestricted DEA registration.

13. Mentorship: A formal, Mutually Structured relationship between the RXN-P as defined in Section (C)(23) of Rule 1.15, and the Physician Mentor or RXN Mentor to further the RXN-P's knowledge, skill, and experience in prescribing.

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

15. Mutually Structured: Developed, implemented, and agreed upon by the RXN-P and the Mentor(s).

16. Pathophysiology: A minimum of three semester hours or four quarter hours completed either as part of a degree program or in addition to a degree program at the graduate or post-graduate level in an accredited nursing program for which graduate credit has been awarded with an emphasis appropriate to the Role and, if applicable, Population Focus of the APRN, including but not limited to pathophysiologic processes of all body systems.

17. Pharmacology: A minimum of three semester credit hours or four quarter hours completed either as part of a degree program or in addition to a degree program at the graduate or post- graduate level in an accredited nursing program for which graduate credit has been awarded with an emphasis appropriate to, but need not be identical to the Role and, if applicable, Population Focus of the APRN, including but not limited to the study of pharmacotherapeutics and pharmacokinetics of broad categories of pharmacological agents.

18. Physical Assessment: A minimum of three semester hours or four quarter hours completed either as part of a degree program or in addition to a degree program at the graduate or post- graduate level in an accredited nursing program for which graduate credit has been awarded with an emphasis appropriate to the Role and, if applicable, Population Focus of the APRN including, but not limited to comprehensive history taking; physical and psychological assessment; pathophysiologic and psychopathologic status of the patient; and development of a clinical diagnosis and management plan.

19. Population Focus: A broad area of study encompassing the common problems of a specific group of patients and the likely co-morbidities, interventions and responses to those problems including, but not limited to, the following areas of practice: primary care across the life span, adults/geriatrics, pediatrics, neonates, women, acute care adults/geriatrics or pediatrics, psychiatry and mental health across the life span. A Population Focus is not defined as a specialty, specific disease, health problem or intervention.

20. Provisional Prescriptive Authority: The authority granted to the Applicant to prescribe medications within the Role and, if applicable, Population Focus of the APRN pursuant to Section (F)(1) and Section (J)(2) of Rule 1.15.

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

22. RXN: An APRN who is listed on the APR and who has been granted Full Prescriptive Authority by the Board.

23. RXN Provisional (RXN-P): An APRN who is listed on the APR and who has been granted Provisional Prescriptive Authority by the Board.

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

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

D. EDUCATIONAL REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

1. An Applicant for prescriptive authority must have successfully completed an appropriate graduate degree or post-graduate degree or certification as determined by the Board in the Role and, if applicable, Population Focus for which the Applicant seeks prescriptive authority. Such coursework shall include a minimum of three graduate semester hours or four quarter hours, or the equivalent thereof, as determined by the Board, in each of the following: Pathophysiology, Pharmacology and Physical Assessment. The coursework in Pharmacology shall include education on prescribing drugs and controlled substances.

2. The transcript shall verify date of course completion, grade and credits awarded. Applicants may provide copies of course descriptions or course syllabi when the required coursework in Physical Assessment, Pathophysiology, and Pharmacology is integrated into broad categories of advanced practice courses or when course titles do not accurately reflect course content.

3. Letters of verification from the education program may be accepted as documentation for the educational requirements of Physical Assessment, Pathophysiology, and Pharmacology. Applicants may petition the Board on a case-by-case basis for a waiver. The decision to grant or deny such waiver shall be at the sole discretion of the Board.

E. NATIONAL CERTIFICATION REQUIREMENT

1. Pursuant to section 12-255-112(4)(a)(III), C.R.S., an APRN applying for prescriptive authority must obtain and maintain national certification from a recognized Certifying Body.

2. Certification requirements for Nurse Practitioner (NP) or Clinical Nurse Specialist (CNS): A Nurse Practitioner (NP) or Clinical Nurse Specialist (CNS) must pass the national certification examination as administered by a Certifying Body in the Role and Population Focus for which the APRN is applying for prescriptive authority. Documentation required shall be verification of current certification or recertification from the Certifying Body, as approved by the Board.

3. Certification requirements for Certified Registered Nurse Anesthetist (CRNA): Certified Registered Nurse Anesthetist (CRNA) must pass the national certification examination as administered by the Council on Certification of Nurse Anesthetists. Documentation required shall be verification of current certification or recertification from the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists, as approved by the Board.

4. Certification Requirements for Certified Nurse-Midwife (CNM): A Certified Nurse-Midwife must meet the standards for education and certification established by the American Midwifery Certification Board (AMCB). Documentation required shall be verification of status as a current holder of an AMCB certificate.

5. If the Applicant cannot meet the requirements for national certification, the Applicant may petition the Board for an exception. Exceptions will be reviewed on a case-by-case basis. The decision to grant or deny such exception shall be at the sole discretion of the Board.

F. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

1. Requirements for Provisional Prescriptive Authority.

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

   b. Pay application fee;

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

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

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

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

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

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

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

2. Requirements for Original Full Prescriptive Authority.

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

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

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

      (1) If the RXN-P cannot meet the requirements in Section (F)(2)(a) of Rule 1.15, the RXN-P may petition the Board for an exception to demonstrate

competence. Exceptions will be reviewed on a case-by-case basis. The decision to grant or deny such exception will be at the sole discretion of the Board.

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

G. MENTORSHIP REQUIREMENTS

1. To obtain Full Prescriptive Authority, the RXN-P must complete 750 hours of documented experience in a Mentorship. The Mentorship shall be conducted with either a Physician Mentor or RXN Mentor [hereinafter referred to as Mentor(s)] as defined in Sections (C)(11) and (C)(12) of Rule 1.15, respectively. The Mentorship must be completed within three years after Provisional Prescriptive Authority is granted.

   a. For the nurse practitioner (NP) role, the mentorship hours must cover each of the competencies for the APRN's Population Focus as defined by the National Organization of Nurse Practitioner Faculties' Population-Focused Nurse Practitioner Competencies, which the Board incorporates by reference. The standards and regulations incorporated by reference may be examined at the State Board of Nursing, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Program Director or the Program Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: for Adult-Gerontology Nurse Practitioners: https://www.aacn.org/~/media/aacn-website/certification/advanced-practice/adultgeroacnpcompetencies.pdf?la=en (effective 2016), and for all other population foci: https://www.aacnnursing.org/Portals/42/AcademicNursing/pdf/Population-Focused-NP-Competencies-2013.pdf (effective 2013). This rule does not include any later amendments or editions of the code, standard, guideline, or rules.

   b. To obtain Full Prescriptive Authority in a Population Focus, the following shall be documented as part of the 750 hours of Mentorship:

      (1) Family and Individuals Across the Lifespan;

         (a) Primary Care - 350 Clinical Hours with a corresponding mentor

         (b) Pediatrics - 150 Clinical Hours with a corresponding mentor

         (c) Adult - 150 Clinical Hours with a corresponding mentor

         (d) Geriatric - 50 Clinical Hours with a corresponding mentor

         (e) Women's Health - 50 Clinical Hours with a corresponding mentor

      (2) Adult Gerontology;

Commented [MD1]: Emily Cheshire - 9/6/23

Note: Entire comment not included here, but is in written comments.

"I would propose:
Adult: 500 hours – 300 of these hours should encompass primary care scope of practice, regardless of clinic speciality (should be anchored to type of care, not type of clinic per the HIV example above).
Geriatric: 50
Women's Health: 50
Pediatrics: 150 hours"

(a) 750 Clinical Hours with a corresponding mentor in Adult Gerontology as defined by a nationally recognized certifying body, as determined by the Board.

(3) Neonatal;

(a) 750 Clinical Hours with a Corresponding Mentor in Neonatal as defined by a nationally recognized certifying body, as determined by the Board.

(4) Pediatrics;

(a) 750 Clinical Hours with a Corresponding Mentor in Pediatrics as defined by a nationally recognized certifying body, as determined by the Board.

(5) Women's Health and/or Gender Related;

(a) 750 Clinical Hours with a corresponding mentor in Women's Health/Gender Related as defined by a nationally recognized certifying body, as determined by the Board.

(6) Psychiatric and Mental Health;

(a) 750 Clinical Hours with a Corresponding mentor in psychiatric and/or behavioral health as defined by a nationally recognized certifying body, as determined by the Board.

c. For the certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), and/or clinical nurse specialist (CNS) roles, the mentorship hours must cover the range of practice for the specific role.

d. This Section (G) does not apply to the RXN-P with prescriptive authority and at least 750 hours of prescribing experience in another state, US jurisdiction or United States military applying for Full Prescriptive Authority as set forth in Section (J)(2) of Rule 1.15.

Deleted: b

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2. The Mentorship Agreement shall contain the following elements:

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

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

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

4. The RXN-P and the Mentor(s) shall provide documentation of the successful completion of the Mentorship as requested by the RXN-P to complete an application to obtain Full Prescriptive Authority. The Mentor(s) shall not, without good cause, withhold his/her signature or otherwise fail to attest to the completion of the Mentorship. Upon submission of the application and development of the Articulated Plan as set forth in Section (H) of Rule 1.15, the RXN- P may be granted Full Prescriptive Authority.

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

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

H [Repealed eff. 10/28/2020]

I. OTHER REQUIREMENTS

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

2. Pursuant to section 12-255-112(7)(c)(II), C.R.S., nothing in Rule 1.15 shall be construed to require a registered nurse to obtain prescriptive authority to deliver anesthesia care.

3. Pursuant to section 12-255-112(9), C.R.S., nothing in Rule 1.15 shall be construed to permit dispensing or distribution, as defined in section 12-280-103(14) and (15), C.R.S., by the RXN, except for receiving and distributing a therapeutic regimen of prepackaged drugs prepared by a licensed pharmacist or drug manufacturer registered with the FDA and appropriately labeled, free samples supplied by a drug manufacturer, and distributing drugs for administration and use by other individuals as authorized by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

K. REINSTATEMENT OF PRESCRIPTIVE AUTHORITY

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

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

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

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

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

L. RENEWAL OF PRESCRIPTIVE AUTHORITY

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

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

M. WITHDRAWAL OF PROVISIONAL OR FULL PRESCRIPTIVE AUTHORITY

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

2. The Board may withdraw Provisional or Full Prescriptive Authority if the APRN no longer meets the requirements for Provisional or Full Prescriptive Authority or the APRN is subject to discipline under section 12-255-120, C.R.S., in accordance with the procedures set forth in section 12-255-119, C.R.S.

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

3. If Provisional or Full Prescriptive Authority has been withdrawn, and the APRN wishes to apply for Provisional or Full Prescriptive Authority, the APRN must file a new application and meet all requirements as set forth in Rule 1.15 at the time of application.

N. DISCIPLINE OF ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

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

Approved: January 27, 2010
Effective: July 1, 2010
Revised: July 25, 2012
Effective: September 14, 2012
Revised: September 18, 2015
Effective: November 14, 2015
Revised: July 26, 2017
Effective: September 14, 2017
Revised: October 27, 2021
Effective: December 30, 2021

…

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

…

1.27 ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES BY ADVANCED PRACTICE NURSES WITH PRESCRIPTIVE AUTHORITY

…

1.28 RULES REGARDING THE USE OF BENZODIAZEPINES

…

Deleted: 1.26 [Emergency rule expired 05/09/2023]¶
1.27 [Emergency rule expired 05/09/2023]¶
1.28 [Emergency rule expired 05/09/2023]

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

…

…

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Deleted: 1.33 PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO¶
This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq*., 12-255-107(1), and 12-20-204, C.R.S.¶
A. Definitions, for purposes of this Rule, are as follows:¶
1. "Applicant" means as defined in section 12-20-102(2), C.R.S.¶
2. "Assisting in the provision reproductive health care" means aiding and abetting, complicity, and conspiracy in the provision of reproductive health care.¶
2. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.¶
3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.¶
4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.¶
5. "Licensee" means as defined in section 12-20-102(10), C.R.S.¶
6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options counseling, and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.¶
7. "Registrant" means as defined in section 12-20-102(12), C.R.S.¶
8. "Regulator" means as defined in section 12-20-102(14), C.R.S.¶
9. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.¶
B. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the applicant or registrant's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.¶
C. The regulator shall not deny registration, certification, or licensure to an applicant or impos …

Deleted: ¶

Editor's Notes

History

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

Chapters 1, 20 eff. 03/17/2019.
Rules 1.15 K.4, 1.15 L.2, 1.25 eff. 12/15/2019.
Rule 1.26 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.27 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rule 1.26 emer. rule eff. 08/30/2020.
Rule 1.27 emer. rule eff. 09/09/2020.
Rules 1.1-1.6, 1.10-1.17, 1.19-1.24 emer. rules eff. 10/28/2020.
Rule 1.26 emer. rule eff. 12/07/2020.
Rule 1.27 emer. rule eff. 12/28/2020.
Rules 1.1-1.6, 1.9 F.4, 1.10-1.17, 1.19-1.24, 1.28, Appendix A eff. 12/30/2020.
Rule 1.28 emer. rule eff. 01/11/2021.
Rule 1.26 emer. rule eff. 04/06/2021.
Rule 1.27 emer. rule eff. 04/27/2021.
Rule 1.28 emer. rule eff. 05/11/2021.
Rules 1.29, 1.30, Appendix A eff. 06/14/2021.
Rules 1.26, 1.27, 1.28 emer. rules eff. 07/12/2021.
Rule 1.31 emer. rule eff. 11/01/2021.
Rules 1.26, 1.27, 1.28 emer. rules eff. 11/02/2021.
Rules 1.1 F, G, 1.2 F, G, H, 1.5 A, 1.10 E, 1.13 H.7, 1.14 D, 1.15 B, F, G, 1.16 B, 1.31 eff. 12/15/2021.
Rules 1.26-1.28 emer. rules eff. 03/02/2022.
Rules 1.26-1.28 emer. rules eff. 05/24/2022; expired 09/21/2022.
Rules 1.26-1.28 emer. rules eff. 09/22/2022.
Rules 1.33, 1.34 emer. rules eff. 10/19/2022.
Rules 1.26-1.28 emer. rules eff. 11/11/2022.
Rules 1.26-1.28 emer. rules eff. 12/10/2022.
Rules 1.1 A,F, 1.10 A,E, 1.14 A,D, 1.31-1.34, Appendix B eff. 12/15/2022.
Rules 1.26-1.28 emer. rules eff. 01/09/2023; expired 05/09/2023.

Annotations

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

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

Notice of Proposed Rulemaking

Tracking number

2023-00600

Department

700 - Department of Regulatory Agencies

Agency

720 - Division of Professions and Occupations - State Plumbing Board

CCR number

3 CCR 720-1

Rule title

PLUMBING RULES AND REGULATIONS

Rulemaking Hearing

Date

10/25/2023

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Plumbing Board will hold a Rulemaking Hearing on October 25, 2023, at 9:00 A.M. to receive testimony before the Board determines whether to approve revisions to Rule 1.2 to implement Colorado House Bill 23-1057 and repeal Rule 1.10 on a permanent basis to implement Colorado Senate Bills 23-265.

Please register to attend by using the link below:

https://us06web.zoom.us/webinar/register/WN_QLOakG-iRIivRuei5SjXWw

Statutory authority

12-20-204, 12-155-105(1)(e), and 24-4-103 C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

State Plumbing Board

PLUMBING RULES AND REGULATIONS

3 CCR 720-1

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

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1.2 STANDARDS

…

E. Revisions and Exceptions to the Incorporated Codes

1. Revisions and Exceptions to the Colorado Plumbing Code

…

s. IPC Section 403.3 Employee and public toilet facilities, effective January 1, 2024

Add a new paragraph to the end of the section to read as follows:

In accordance with section 9-5.7-103, C.R.S., all state department (excluding K-12 schools), state agency, state institution of higher education, county, a city and county, or municipality buildings that are newly constructed or are being remodeled shall provide an ADA-compliant single-user or an ADA-compliant multi-user non-gendered restroom on each floor level where restrooms are accessible to the public, and all single-user restrooms shall not be identified for use by any specific gender.

ts. IPC Section 405.3.2 Public Lavatories

…

ut. IPC Section 410.4 Substitution.

…

vu. IPC Section 421.7 Shower head location

…

wv. IPC Section 421.8 Shower valve location

…

xw. IPC Section 425.3 Water closet seats

…

yx. IPC Section 504.6.1 Collection of Relief Valve Discharge

…

zy. IPC Section 504.6.1.1 Pumped discharge of relief valve collection

…

aaz. IPC Section 504.7 Required pan.

…

bbaa. IPC Section 504.7 Required pan.

…

ccbb. IPC Section 605.15.2 Solvent cementing

…

ddcc. IPC Section 608.3.1 Special equipment, water supply protection

…

eedd. IPC Section 608.9.1 Signage required

…

ffee. IPC Section 608.9.2 Distribution pipe labeling and marking

…

ggff. IPC Section 608-17 Connections to the Potable Water Systems

…

hhgg. IPC Section 608 Protection of potable water system

…

iihh. IPC Section 701.2 Connection to sewer required

…

jjii. IPC Section 705.10.2 Solvent cementing

…

kkjj. IPC Section 706.3. Installation of fittings

…

llkk. IPC Table 706.3 Fittings for change of direction

…

mm~~ll~~. IPC Section 708.1.3 Building drain and building sewer junction.

…

nn~~mm~~. IPC Section 802.1.8 Domestic dishwashing machines

…

oo~~nn~~. IPC Section 802.3 Installation

…

pp~~oo~~. IPC Section 802.4 Waste receptors.

…

qq~~pp~~. IPC Section 903.1.1 Roof extension unprotected

…

rr~~qq~~. IPC Section 903.1.3 Protected vent terminal

…

ss~~rr~~. IPC Section 903.2 Frost Closure

…

tt~~ss~~. IPC Section 912.1 Horizontal wet vent permitted

…

uu~~tt~~. IPC Section 1002.1 Fixture traps

…

vv~~uu~~. IPC Section 1003.1 Where required

…

ww~~vv~~. IPC.1003.2.3 Food waste disposers restriction.

…

xx~~ww~~. IPC Section 1101.3 Prohibited drainage

…

yy~~xx~~. IPC Section 1301.2.2 Filtration Required Exception

…

zz~~yy~~. IPC Section 1301 General

…

aaa~~zz~~. IPC Section 1301.3.2 Signage required graywater treatment works.

…

bbb~~aaa~~. IPC Section 1301 General

…

ccc~~bbb~~. IPC Section 1301 General

…

dddeee. IPC Section 1301 General

…

eeeddd. IPC Section 1301 General

…

fffeee. IPC Section 1301.9.2 Materials Exception Add section

…

gggfff. IPC Section 1301.9.5 Overflow

…

hhhggg. IPC Section 1301.9.8 Draining of tanks

…

iiihhh. IPC Section 1301.11 Trenching Requirements

…

jjjiii. IPC Section 1301.12 Outdoor Outlet Access

…

kkkjjj. IPC Section 1302.1 General

…

lllkkk. IPC Section 1302.5 Filtration

…

mmmlll. IPC Section 1302.6.1 Graywater used for fixture flushing

…

nnnmmm. IPC Section 1302.7.3 Overflow

…

ooonnn. IPC Section 1302.7.4 Venting

…

pppooo. IPC Section 1302.7.5 Tank Drains

…

qqqppp. IPC Section 1302.8.1 Bypass Valve

…

rrrqqq. IPC Section 1303 Nonpotable rainwater collection and distribution systems

…

sssrrr. IPC Chapter 14 Subsurface landscape irrigation systems

…

1.10 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-155-105(1)(e) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Registrant" means as defined in section 12-20-102(12), C.R.S.

6. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. [Expired 05/15/2023 per Senate Bill 23-102]

C. [Expired 05/15/2023 per Senate Bill 23-102]

Editor's Notes

History

Entire rule eff. 01/01/2008.

Entire rule eff. 04/01/2010.

Rules 2.3.A, 2.4.1-2.4.2, 6.4 eff. 09/01/2011.

Entire rule eff. 03/15/2014.

Rules 2.3, 3.1 eff. 12/15/2014.

Entire rule eff. 02/14/2016.

Rules 2.5.1.27, 4.1, 4.2, 4.5.4, 4.5.5, 4.6-4.13, 6.1, 7.4 eff. 04/01/2016.

Rules 1.2 A-C, 1.2 D.4, 1.2 D.7-10, 1.2 E, 1.3, 1.4 A, 1.4 E, 1.6 B.8 eff. 06/14/2020. Rule 1.4.D repealed eff. 06/14/2020.

Rule 1.3 C eff. 08/30/2021.

Rule 1.4 L.2 eff. 12/15/2021.

Rule 1.10 emer. rule eff. 10/26/2022.

Rule 1.10 eff. 12/15/2022.

Rules 1.2, 1.3 A,B, 1.4 A,B,E,L, 1.5 E, 1.7 D eff. 04/14/2023.

Annotations

Rules 1.10 B. and 1.10 C. (adopted 10/26/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00598

Department

700 - Department of Regulatory Agencies

Agency

734 - Division of Professions and Occupations - State Board of Unlicensed Psychotherapists

CCR number

4 CCR 734-1

Rule title

UNLICENSED PSYCHOTHERAPISTS RULES AND REGULATIONS

Rulemaking Hearing

Date

10/20/2023

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Board of Unlicensed Psychotherapists will hold a Rulemaking Hearing on October 20, 2023, at 9:00 A.M. to receive testimony before the Board determines whether to repeal Rules 1.18 and 1.19 on a permanent basis to implement Colorado Senate Bills 23-188 and 23-265.

Please register to attend by using the link below:

https://us06web.zoom.us/webinar/register/WN_Cw4o_1DUQui1Se6ODBpVaw

Statutory authority

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

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DEPARTMENT OF REGULATORY AGENCIES

State Board of Unlicensed Psychotherapists

UNLICENSED PSYCHOTHERAPISTS RULES AND REGULATIONS

4 CCR 734-1

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

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~~**1.18 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO**~~

~~**This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-245-204(4)(a), and 12-20-204, C.R.S.**~~

~~**A. Definitions, for purposes of this Rule, are as follows:**~~

~~**1. "Applicant" means as defined in section 12-20-102(2), C.R.S.**~~

~~**2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.**~~

~~**3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.**~~

~~**4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.**~~

~~**5. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.**~~

~~**6. "Registrant" means as defined in section 12-20-102(12), C.R.S.**~~

~~**7. "Regulator" means as defined in section 12-20-102(14), C.R.S.**~~

~~**8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.**~~

~~**B. The regulator shall not deny registration to an applicant or impose disciplinary action against an individual's registration based solely on the applicant or registrant's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.**~~

~~C. The regulator shall not deny registration to an applicant or impose disciplinary action against an individual's registration based solely on a civil or criminal judgment against the applicant or registration arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.~~

~~D. The regulator shall not deny registration to an applicant or impose disciplinary action against an individual's registration based solely on a professional disciplinary action or any other sanction against the applicant's or registrant's professional registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant or registrant's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.~~

~~E. The regulator shall not deny registration to an applicant or impose disciplinary action against an individual's registration based solely on the registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny registration to an applicant or impose disciplinary action against an individual's registration based solely on a civil or criminal judgment against the applicant or registration arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.~~

~~1.19 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES~~

~~This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-245-204(4)(a) and 12-20-204, C.R.S.~~

~~A. Definitions, for purposes of this Rule, are as follows:~~

~~1. "Applicant" means as defined in section 12-20-102(2), C.R.S.~~

~~2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.~~

~~3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.~~

~~4. "Registrant" means as defined in section 12-20-102(12), C.R.S.~~

~~5. "Regulator" means as defined in section 12-20-102(14), C.R.S.~~

~~B. [Expired 05/15/2023 per Senate Bill 23-102]~~

~~C. [Expired 05/15/2023 per Senate Bill 23-102]~~

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Editor's Notes

History

Entire rule emer. rule eff. 12/16/2011.

Entire rule eff. 02/15/2012.

Authority, Purpose and Scope, rules 1.1 A, 1.1 E, 1.4 B.1, 1.6, 1.7 B.3, 1.8 - 1.10, 1.12, 1.14 emer. rules eff. 10/16/2020.

Authority, Purpose and Scope, rules 1.1 A, 1.1 E, 1.4 B.1, 1.6, 1.7 B.3, 1.8 - 1.10, 1.12 - 1.16, Appendix A eff. 12/15/2020.

Rules 1.6 A, 1.16, Appendix A eff. 06/14/2021.

Rule 1.8 B eff. 12/15/2021.

Rules 1.18, 1.19 emer. rules eff. 10/21/2022.

Rules 1.17-1.19, Appendix B eff. 12/15/2022.

Annotations

Rule 1.16 E.4. (adopted 10/16/2020) was not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

Rules 1.19 B. and 1.19 C. (adopted 10/21/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00601

Department

700 - Department of Regulatory Agencies

Agency

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

CCR number

4 CCR 736-1

Rule title

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

Rulemaking Hearing

Date

10/27/2023

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Board of Marriage and Family Therapist Examiners will hold a Rulemaking Hearing on October 27, 2023, at 9:00 A.M. to receive testimony before the Board determines whether to repeal Rules 1.24 and 1.25 on a permanent basis to implement Colorado Senate Bills 23-188 and 23-265.

Please register to attend by using the link below:

https://us06web.zoom.us/webinar/register/WN_i81VtHqeQee3L3p1mCOJAg

Statutory authority

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

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DEPARTMENT OF REGULATORY AGENCIES

Board of Marriage and Family Therapist Examiners

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

4 CCR 736-1

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

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~~**1.24 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO**~~

~~**This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-245-204(4)(a), and 12-20-204, C.R.S.**~~

~~**A. Definitions, for purposes of this Rule, are as follows:**~~

~~**1. "Applicant" means as defined in section 12-20-102(2), C.R.S.**~~

~~**2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.**~~

~~**3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.**~~

~~**4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.**~~

~~**5. "Licensee" means as defined in section 12-20-102(10), C.R.S.**~~

~~**6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.**~~

~~7. "Regulator" means as defined in section 12-20-102(14), C.R.S.~~

~~8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.~~

~~9. "Registrant" means as defined in section 12-20-102(12), C.R.S.~~

~~B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license or registration based solely on the applicant, registrant's, or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.~~

~~C. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.~~

~~D. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a professional disciplinary action or any other sanction against the applicant's, registrant's, or licensee's professional licensure or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, registrant's, or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.~~

~~E. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's registration or license based solely on the licensee's or registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.~~

~~1.25 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES~~

~~This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-245-204(4)(a) and 12-20-204, C.R.S.~~

~~A. Definitions, for purposes of this Rule, are as follows:~~

~~1. "Applicant" means as defined in section 12-20-102(2), C.R.S.~~

~~2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.~~

~~3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.~~

~~4. "Licensee" means as defined in section 12-20-102(10), C.R.S.~~

~~5. "Regulator" means as defined in section 12-20-102(14), C.R.S.~~

~~6. "Registrant" means as defined in section 12-20-102(12), C.R.S.~~

~~B. [Expired 05/15/2023 per Senate Bill 23-102]~~

~~C. [Expired 05/15/2023 per Senate Bill 23-102]~~

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Editor's Notes

History

Rule 17(a) emer. rule eff. 10/26/2007; expired eff. 01/26/2008.
Rule 17 eff. 03/01/2008.
Purpose and Scope, rules 12, 15, 19, 20 emer. rules eff. 01/01/2011.
Purpose and Scope, rules 12, 15, 19, 20 eff. 02/01/2011.
Entire rule emer. rule eff. 12/09/2011.
Entire rule eff. 02/01/2012.
Rule 12 eff. 05/02/2016.
Rules 1.6 A, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A emer. rules eff. 10/23/2020.
Rules 1.6 A, 1.12, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A, 1.22, Appendix A eff. 12/15/2020.
Rules 1.6 A, 1.12 C-D, 1.22, Appendix A eff. 06/30/2021.
Rule 1.8 B eff. 12/30/2021.
Rules 1.24, 1.25 emer. rules eff. 10/28/2022.
Rules 1.12, 1.23-1.25, Appendix B eff. 12/15/2022.

Annotations

Rules 1.12 C., 1.12 D., 1.22 E.4. (adopted 10/23/2020) were not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

Rules 1.25 B. and 1.25 C. (adopted 10/28/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

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Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-3

Rule title

REGULATIONS CONCERNING BENEFITS AND EMPLOYER PARTICIPATION REQUIREMENTS

Rulemaking Hearing

Date

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Time

04:30 PM

Location

Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Edits to 7 CCR 1107-3 for further clarification and alignment to the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING BENEFITS AND EMPLOYER PARTICIPATION REQUIREMENTS

7 CCR 1107-3

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

3.1. Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 ~~C.R.S~~. et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, ~~section~~ C.R.S. § 24-4-101 et seq. (the "APA"), ~~C.R.S.~~and the Paid Family and Medical Leave Insurance Act, ~~sections~~ C.R.S. §§ 8-13.3-501 through 524 (the "Act~~"), C.R.S.~~").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to benefits and employer participation.

3. Article 6 of C.R.S. Title 26 (~~2022~~2023), Articles 13.3 and 70 of C.R.S. Title 8 (~~2022~~2023), Articles 4 and 11 of C.R.S. Title 24 (~~2022~~2023), Article 13 of C.R.S. Title 38 (~~2022~~2023), 29 C.F.R. 825, et seq. (~~2022~~2023), and 45 U.S.C. ~~section~~§ 351 et seq. (~~2022~~2023) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

3.2. Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Application year" as used at C.R.S. § 8-13.3-505(1), and as described at C.R.S. § 8-13.3-521(1)(b) as a "benefit year," means the 12-month period beginning on the first day of the calendar week in which an individual's benefit start date occurs. The 12-month period is measured ~~backward~~forward from the date an employee uses paid family and medical leave insurance benefits. Under this "~~rolling" 12-month period, each time~~ measured forward" method, an employee ~~takes paid family and medical leave, the remaining leave entitlement~~ would be ~~the balance which has not been used~~entitled to the leave amounts described at C.R.S. § 8-13.3-

505(1) during the ~~immediately preceding~~year beginning on the first date FAMLI leave is taken, and the next 12-month period would begin the first time FAMLI leave is taken after the completion of any 12 ~~months~~-month period.

3. "Benefit start date" means the first day the covered individual is unable to work for which benefits are approved.

4. "Benefit year," for purposes of applying the definitions of "base period" at C.R.S. § 8-70-103(2) and "alternative base period" at C.R.S. § 8-70-103(1.5), means "application year" as defined at 7 CCR 1107-3, Section 3.2.2.

5. "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday, and excludes any Colorado state holidays, as listed in C.R.S. § 24-11-101.

6. "Calendar week" means any period of seven consecutive days.

7. "Claimant" means a person who has filed a claim for paid family and medical leave insurance benefits, regardless of whether the person is a covered individual pursuant to C.R.S. § 8-13.3-503(3).

8. "Continuous leave" means one non-recurring uninterrupted period of leave.

9. "Days" means calendar days unless otherwise specified as a business day, as defined by these rules.

10. "Designated Representative" means a person or entity legally authorized to make decisions on behalf of a claimant, with regard to the FAMLI program. That legal authorization may be through written designation from the claimant or through legal status as a parent, guardian, conservator, or power of attorney. If the claimant is unable to file a claim or authorize a designated representative due to the claimant's medical incapacitation, a claimant's family member may serve as a designated representative without prior authorization from the claimant. For safe leave applications, the alleged perpetrator of domestic violence, stalking, sexual assault, or sexual abuse may not be the claimant's designated representative.

~~11. "Employer" as used throughout 7 CCR 1107-3, does not, unless otherwise specified, include local government employers that decline participation in the FAMLI program, or employers who meet their obligations under the FAMLI Act through an approved private plan.~~

~~12~~11. "Good cause" shall exist if the Division determines that a reasonably prudent individual under the same or similar circumstances would have been prevented from complying with deadlines established by the FAMLI Act and its implementing regulations. In determining whether good cause exists, the Division shall consider all factors that it deems relevant, including but not limited to:

A. Whether the requestor received timely and adequate notice of the need to act;

B. Administrative error by the Division or its representatives, or the failure of the Division or its representatives to discharge its responsibilities;

C. Factors outside the control of the requestor which prevented a timely action;

D. The requestor's physical or mental impairment, particularly if the impairment is related to the request for paid leave;

E. Whether the requestor acted diligently in submitting the request once the reason for the late request no longer existed;

F. The total length of time that the action was untimely;

G. Whether the delay affects the ability for the Division or private plan administrator to determine the validity of the request for paid family and medical leave insurance benefits; and

H. Good faith error, provided that in determining whether good faith error constitutes good cause, the Division or private plan administrator shall consider any prior history of such errors, whether the request is excessively late, and whether the requestor otherwise acted with due diligence.

12. "Health care provider" as defined by C.R.S. § 8-13.3-503(13) is limited to an individual licensed under Colorado law to provide medical services or an individual with a National Provider Identifier ("NPI") number issued by the National Plan and Provider Enumeration Service ("NPPES") who is licensed to provide medical services. A health care provider may only certify the need for FAMLI leave if such certification is within the scope of their licensure.

13. "In loco parentis" means a relationship in which a person puts himself or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in loco parentis to a child as long as the relative satisfies the in loco parentis requirements. Persons who are in loco parentis include those with day-to-day responsibilities to care for or financially support a child. In determining in loco parentis status, the Division will consider the age of the child; the degree to which the child is dependent on the person; the amount of financial support, if any, provided; and the extent to which duties commonly associated with parenthood are exercised. The fact that a child has a biological parent in the home, or has both a mother and a father, does not prevent an employee from standing in loco parentis to that child. The FAMLI act does not restrict the number of parents a child may have. The specific facts of each situation will determine whether an employee stands in loco parentis to a child.

14. "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason.

15. "Reduced leave schedule" means a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

16. "Regular work schedule" means the ~~days of the week and the~~ number of weekly hours ~~typically worked by the covered~~an individual ~~in~~ would typically work at the job or jobs ~~held by the covered individual as of the first date of the leave. Regular work schedule shall be determined by~~ from which they are taking ~~an average of the schedule worked during the 4 weeks prior to the last day worked. If the covered individual has worked fewer than 4 weeks, the average shall only include the weeks in which the Covered Employee was employed.~~family and medical leave if not for their leave, plus the number of hours they typically work at the job or jobs they maintain during family and medical leave. The individual's regular work schedule is calculated for each job individually and then aggregated to determine their aggregate regular work schedule. For purposes of calculating a regular work schedule, ~~days~~hours missed due to ~~paid sick leave, paid time off, holiday pay,~~holidays or other ~~employer-provided~~types of paid leave must be included. ~~If a covered individual is unable to provide evidence sufficient for the Division to determine their~~ For the purpose of calculating the individual's regular work schedule, ~~the Division may, at its discretion, assign a regular work schedule equal to 8 hours per weekday, 40 hours per week~~"job" means any arrangement where an individual is paid for their services, including self-employment, gig work, and all employment, regardless of whether it is covered under the FAMLI Act.

17. "Self-employed individual" has the same meaning as ~~used~~ in ~~the FAMLI Act and its implementing regulations includes individuals who meet the FAMLI Act's two-prong exception to the definition of "employee" at C.R.S. 8-13.3-503(~~7~~). CCR 1107-1.

18. "Wage replacement benefit" means the monetary weekly benefit amount described at C.R.S. § 8-13.3-506.

19. "Wages" has the same meaning as "wages" as defined in 7 CCR 1107-1.

20. "Wages subject to premiums" as used in C.R.S. 8-13.3-503(3)(a) include wages paid to an employee by an employer with an approved private plan, wages paid to an employee by an employer under the state plan, and wages earned from either self employment or local government employment by individuals who have elected coverage pursuant to C.R.S. 8-13.3-514.

21. "Willful" or "willfully" as used in the FAMLI Act or its implementing regulations means the employer or individual knew or showed reckless disregard for whether its conduct was prohibited by the FAMLI Act~~.~~ or its implementing regulations.

3.3. Employer Participation Requirements

1. Employers, including local government employers that decline participation in the FAMLI program, and employers who meet their obligations under the FAMLI Act through an approved private plan, must register with the FAMLI Division via "MyFAMLI+ Employer" by January 1, 2023, or when they become an employer, whichever occurs later.

2. Employers must submit wage reports to the Division on the same quarterly schedule as they must submit premiums to the Division pursuant to 7 CCR 1107-1.

   A. ~~-~~If an employer fails to timely submit wage reports, the Division may assess upon the employer a fine of up to $50.00 per employee whose wages were not reported.

   B. If an employer submits an amended wage report after the due date to submit premiums pursuant to 7 CCR 1107-1, and the amended wage report increases premiums owed by twenty-five (25) percent or more, then the wage report shall not be considered timely regarding those employees whose wages were amended.

3. An employer must notify the Division within 10 business days if it ceases business operations in Colorado or otherwise ceases to employ Colorado employees, in accordance with the provisions of 7 CCR 1107-1 regarding ~~in-state status~~localization of employees. An employer with no Colorado employees will not be required to remit premiums, submit wage reports, or otherwise participate in the FAMLI program. If the employer later resumes business operations or again employs workers in Colorado, it must register with the FAMLI Division via "MyFAMLI+ Employer."

3.4. Clarifications Regarding Use of Paid Family and Medical Leave Insurance Benefits

1. The use of paid family and medical leave insurance benefits is restricted to absences caused by a qualifying condition described at C.R.S. § 8-13.3-504(2). If the absence is caused by a reason other than a qualifying condition described at C.R.S. § 8-13.3-504(2), paid family and medical leave insurance benefits are not available.

   A. If a covered individual is awarded continuous leave for an absence caused by a qualifying condition described at C.R.S. § 8-13.3-504(2), the ~~duration of the~~ awarded leave is not impacted by subsequent unemployment~~.~~, except when the individual receives unemployment benefits in accordance with 7 CCR 1107-4, Section 4.4.

B. If a covered individual is awarded intermittent leave or reduced leave schedule for an absence caused by a qualifying condition described at C.R.S. § 8-13.3-504(2), and subsequently becomes unemployed or changes employers, the awarded leave terminates upon unemployment or the change in employment, and the covered individual may apply for benefits upon reemployment. An individual becomes unemployed within the meaning of this rule if they are terminated, they resign, or no work is available to them due to a cessation in operations, the end of seasonal employment, an academic break of three or more weeks, or any other reason that causes the cessation of available work.

2. For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FAMLI leave has no effect; the week is counted as a week of FAMLI leave. and the employee will receive wage replacement benefits for the entire week. However, if an employee is using FAMLI leave in increments of less than one week, the holiday will not count against the employee's FAMLI entitlement—and the employee will not receive wage replacement benefits for the holiday—unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity or the employee's position has temporarily ceased and ~~employees generally are~~employee is not expected to report for work for one or more weeks, the days the employer's activities or the employee's position have ceased do not count against the employee's FAMLI leave entitlement and the employee will not receive wage replacement benefits for them, unless they are on continuous leave that began before the cessation in operations.

3. Paid family and medical leave insurance benefits are available to an individual while taking paid family and medical leave if the individual meets the definition of "covered individual" under C.R.S. § 8-13.3-503(3) and has a qualifying condition described at C.R.S. § 8-13.3-504(2).

   A. To determine whether an individual has met the $2,500.00 threshold described at C.R.S. § 8-13.3-503(3)(a)(I), the Division will rely on wages reported to the Division by the employer pursuant to these rules. If a claim for benefits is denied because the reported wages do not establish that the individual has met the $2,500.00 threshold, the individual may appeal the Division's denial and submit evidence that they have met the threshold.

   B. An individual claimant can meet the $2,500.00 threshold described at C.R.S. § 8-13.3-503(3)(a)(I) by earning wages subject to premiums from any combination of employers, and a claimant need not earn $2,500.00 from their current employer to meet the threshold.

   C. An individual meets the $2,500.00 threshold described at C.R.S. § 8-13.3-503(3)(a)(I) if the individual has been paid that amount of wages during either the individual's base period, as defined at C.R.S. § 8-70-103(2), or the individual's alternative base period, as defined at C.R.S. § 8-70-103(1.5).

4. Paid family and medical leave insurance benefits are available for absences occurring on or after January 1, 2024 caused by a qualifying condition described at C.R.S. § 8-13.3-504(2), regardless of the onset date of the qualifying condition.

5. "Serious health condition" determinations by the Division will be in accordance with the Family and Medical Leave Act's provisions regarding "serious health conditions" at 29 C.F.R. 825 et seq., except where those regulations conflict with the FAMLI Act or its implementing regulations.

6. To determine whether an individual is a family member under C.R.S. § 8-13.3-503(11)(e) because the individual is someone with whom the covered individual has a significant personal bond that is or is like a family relationship, the Division will look to the totality of the circumstances surrounding the relationship, including, but not limited to, the following non-dispositive factors:

A. Shared financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;

B. Emergency contact designations;

C. The expectation of care created by the relationship and/or the prior provision of care;

D. Cohabitation and the duration thereof; and

E. Geographical proximity.

7. Clarifications regarding "caring for a new child" under C.R.S. § 8-13.3-504(2)(a):

A. "Caring" includes bonding with and providing basic needs for a new child.

B. "Child" means a person who is either under the age of 18, or between the ages of 18 and 21 and remains under the jurisdiction of a juvenile court.

C. Benefits under C.R.S. § 8-13.3-504(2)(a) are limited to biological parents, adoptive parents, foster parents, step parents, ~~domestic partners and~~ individuals standing in loco parentis to the child, and domestic partners of any of the individuals listed in this Section 3.4.7.C.

D. If a person has received benefits under C.R.S. § 8-13.3-504(2)(a) to care for a new child placed through foster care, and the person later adopts the child, the person is not entitled to again receive benefits under C.R.S. § 8-13.3-504(2)(a) in relation to the adoption of the same child.

~~E. Paid family and medical leave under C.R.S. 8-13.3-504(2)(a) may be continuous, reduced leave schedule, or intermittent leave.~~

8. Clarifications regarding "safe leave" under C.R.S. § 8-13.3-503(18) and 504(2)(e):

A. To determine whether an individual is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse, for purposes of determining eligibility for safe leave, an individual need not prove that a court has determined that the individual was the victim of domestic violence, stalking, sexual assault, or sexual abuse.

B. Benefits may be awarded based on the victim's good-faith attestation that the circumstances giving rise to the safe leave satisfy the elements of the offense.

C. If an individual is granted safe leave based on their good-faith attestations, and is later found by a court not to have been a victim of domestic violence, stalking, sexual assault, or sexual abuse, benefits paid for the leave will not be considered an overpayment unless a court's findings show that the attestations were not in good faith.

3.5. Amount, Duration, and Format of Benefits

1. ~~Benefit Amounts~~ The Division will calculate a covered individual's average weekly wage in accordance with C.R.S. §§ 8-13.3-503(2) and 506(2) based on their wages subject to premiums.

~~A. A covered individual's weekly benefit~~

2. The Division will ~~be determined as follows:~~calculate ~~1. The portion of~~ the covered individual's ~~average weekly wage, from the employer or employers from which the~~ weekly benefit in

accordance with C.R.S. 8-13.3-506(1)(a). The covered individual ~~is taking leave, that is equal to or less than 50 percent of the state average weekly wage~~ shall ~~be replaced at a rate of 90 percent; and2. The portion of the covered individual's average weekly wage, from the employer or employers from which the covered individual is taking leave, that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 percent.~~receive their~~B. The maximum~~ weekly benefit amount multiplied by their FAMLI weekly usage for ~~a covered individual is 90 percent~~each week of leave, subject to limitations under Section 3.5.5 of these rules.

3. FAMLI~~the state average~~ weekly ~~wage, except that for paid~~usage shall be determined by dividing the number of hours of family and medical leave the individual takes per week by their aggregate regular work schedule for that week.

A. The hours of family and medical leave taken for any job cannot exceed the regular work schedule for that job.

B. If a covered individual is unable to provide the Division with the number of scheduled or worked hours for any job during their leave, the Division may, at its discretion and based on previous work schedules or other information available to it, assign a reasonably approximate regular work schedule.

C. If an individual's regular work schedule increases or decreases during their leave, the Division shall make any adjustments to~~beginning before January 1, 2025, the maximum weekly~~ benefit ~~is $1,100.00~~awards made necessary by that increase or decrease.

~~C~~D. However, if the individual's work schedule for a job from which they are taking continuous family and medical leave decreases to zero (e.g. termination, resignation, suspension of position, scheduled academic break), the Division will not make adjustments to benefit awards based on that decrease.

E. Regular work schedule must be calculated as of the first date of the leave and, if applicable, upon notification from the claimant that their regular work schedule has changed.

4. To determine an individual's average weekly wage in accordance with C.R.S. § 8-13.3-503(2), the Division will rely on earnings reported to the Division pursuant to these rules. If the Division cannot sufficiently calculate an individual's average weekly wage based on earnings reported to the Division pursuant to these rules, the Division may request from the individual and/or the individual's current employer or employers documentation of the individual's earnings during the individual's base period or alternative base period, and may rely on that documentation and any other information that is reasonable or reliable.

~~D. If a covered individual has multiple jobs, has multiple sources of self-employment, or has a job in addition to being self-employed, and the covered individual does not take paid family and medical leave from all sources of employment or self-employment, then the individual's weekly benefit will be determined by first calculating the amount described at 7 CCR 1107-3 Sections 3.5.1.A and 3.5.1.B, and then prorating that amount based on the portion of the individual's current weekly earnings lost due to the absence from work.~~

~~E. If some or all awarded leave is for a duration of less than a week, the benefit amount will be prorated based on the portion of work missed for the week. That proration shall be as follows:~~

~~1. Determine the wage replacement benefit for a full week of leave;~~

~~2. Divide the approved duration of leave by claimant's regular work schedule; and~~

~~3. Multiply these two numbers together.~~

~~F~~5. Absences of less than 8 hours may be approved, but wage replacement benefits will be paid in accordance with C.R.S. ~~8-13.3-505(3).~~§ 8-13.3-505(3). The 8-hour threshold must be met with each claim and each recertification period.

~~G. At the beginning of every calendar quarter, the~~

6. The Division will recalculate wage replacement benefit awards for in-progress awards of paid family and medical leave~~.~~ if the state average weekly wage changes, a change in regular work schedule triggers a recalculation in accordance with these rules, or the outcome of an appeal results in a change in awarded benefits. If the recalculation increases or decreases the wage replacement benefit amount, the Division will notify the covered individual and will adjust future payments accordingly. If the covered individual's employer has made a valid request for benefit amounts in accordance with 7 CCR 1107-3, Section 3.~~7.6~~8.9., the Division will notify the employer of any increases or decreases in the covered individual's wage replacement benefit amount.

~~2. Duration of Leave~~

~~A.~~7. The Division will award benefits for a reasonable duration in accordance with the details in the application, the documentation submitted, and where applicable, known standards of care. The awarded benefits must not exceed the duration limits described at C.R.S. § 8-13.3-505(1).

~~B. The hourly expression of a covered individual's total allotted leave duration is equal to the total number of hours in the covered individual's regular work schedule, multiplied by the number of weeks of leave the individual is entitled to pursuant to C.R.S. 8-13.3-505(1).~~

~~C.~~ 8. The duration of leave taken for any week for the purpose of C.R.S. § 8-13.3-505 shall be equal to FAMLI weekly usage for that week. 100% FAMLI weekly usage shall count as one week of duration used.

9. Approved leave may be taken in increments of one hour or less, in accordance with C.R.S. § 8-13.3-505(3).

~~3.~~10. Approved leave for any qualifying condition may be in the form of continuous leave, intermittent leave, or reduced leave schedule. Prior employer approval is not needed to access continuous leave, reduced leave, or intermittent leave schedules.

~~4.~~11. The amount and duration of family and medical leave benefits may be ~~reduced~~impacted by the receipt of ~~other~~workers' compensation benefits or unemployment insurance benefits, as detailed in 7 CCR 1107-4.

12. Benefit awards for approved leave are not impacted by the end of the claimant's benefit year that occurs during the approved leave.

3.6. Applying for Benefits

1. To request paid family and medical leave insurance benefits, the claimant or the claimant's designated representative must apply to the Division for benefits.

2. Applications may be submitted up to thirty (30) days prior to the benefit start date.

3. The Division will notify the claimant's employer of the application submission within five (5) business days.

4. Applications~~If the need for leave is unforeseeable, or if submitting an application in advance of the leave is otherwise impracticable, applications~~ may be submitted up to thirty (30) days after the leave has begun. If the Division receives an application after thirty (30) days, but before ninety (90) days, the Division will consider the application if it includes evidence establishing good cause for the claimant's failure to submit the application within thirty (30) days.

5. Additional Documentation Requirements

   A. For leave necessary to care for a child because of birth, the claimant must submit the following documentation with their application:

      1. Proof of birth, which may include a birth certificate, an application for a birth certificate, documentation from a health care provider who provided care during the birth or recovery, or other vital records showing birth;

      2. A statement establishing in loco parentis status; and

      3. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

   B. For leave necessary to care for a child because of adoption, the claimant must submit the following documentation with their application:

      1. Proof of adoption placement, which may include documentation from a court or an adoption agency; and

      2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

   C. For leave necessary to care for a child because of placement through foster care, the claimant must submit the following documentation with their application:

      1. Either:

         a. Proof that the claimant is either a licensed or certified foster parent and the child has been placed in their care; or

         b. Documentation from a child placement agency as defined in C.R.S. § 26-6-102, the state department of human services, a county department of human services, or a court indicating a kinship or emergency placement was necessary to provide for the immediate care and safety of a minor child, and the person will be standing in loco parentis through a power of attorney or other legal designation; and

      2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

   D. For leave necessary to care for a family member with a serious health condition, the claimant must submit the following documentation with their application:

      1. A "Serious Health Condition Certification - Family Member Form" completed and signed by the family member's health care provider; and

      2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

E. For leave necessary because of the claimant's own serious health condition, the claimant must submit the following documentation with their application:

1. A "Serious Health Condition Certification - Self Form" completed and signed by the health care provider; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

F. For leave due to a need for qualifying exigency leave, the claimant must submit the following documentation with their application:

1. A "Military Exigency Leave Attestation Form" completed by the claimant; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

G. For leave due to a need for safe leave, the claimant must submit the following documentation with their application:

1. A "Safe Leave Attestation Form" completed by the victim or a family member of the victim; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

~~6~~6. For applications for benefits requiring certification by a health care provider, the health care provider may not be the claimant or a family member of the claimant.

7. Applications may be submitted using the FAMLI Division's online system, by mail, or by email.

~~7.~~8. Requirements for an ~~Application~~application to be ~~Considered Filed~~considered filed

A. Upon receipt of an application for benefits, the Division will review the application. If the Division needs more information or documentation to adjudicate the claim for benefits, it will make a reasonable effort to promptly obtain the additional information or documentation from the claimant, using the claimant's preferred language and method of contact.

B. An application will not be considered filed until all required information and documentation has been received by the Division, and the Division has been notified that the paid family and medical leave has begun.

C. If an application is not properly filed within sixty (60) days after the Division receives it, the application will be closed and the Division will take no further action on it, absent a finding of good cause based on evidence submitted by the claimant. The Division will notify the claimant prior to any such closure in their preferred language and method of contact, and will describe the claimant's opportunity to establish good cause to keep the application open.

D. Once an application is properly filed, the Division will notify the claimant and the employer of the proper filing within five (5) business days.

3.7. Requirements Regarding Notice to ~~Employers~~Employees

1. Employers must display the program notice described by C.R.S. § 8-13.3-511 in a conspicuous and accessible place in each establishment where employees are employed; provided, however, in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification must be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.

2. In addition to displaying the program notice described by C.R.S. § 8-13.3-511, employers must individually deliver the program notice to employees upon hiring and, absent extenuating circumstances, within five days upon learning of an employee experiencing an event that triggers eligibility pursuant to C.R.S. § 8-13.3-504. Upon the employee's request, the employer shall deliver the program notice in the first language spoken by the employee.

3. The program notice must be in English, Spanish, and in any language representing the first language spoken by at least five percent of the employer's workplace.

3.8. Requirements Regarding Notice to Employers

1. A claimant must schedule leave in accordance with C.R.S. § 8-13.3-505(4), and must notify their employer or employers of the need for leave in accordance with C.R.S. § 8-13.3-505(5). For individuals on intermittent leave, these scheduling and notice requirements apply to each absence. Notification need not include any specific terms or reference specific provisions of the FAMLI Act or its implementing regulations, but must reasonably implicate qualifying leave under the FAMLI Act to satisfy the notification requirement at C.R.S. § 8-13.3-505(5).

2. If the need for leave is foreseeable, a claimant must consult with the employer and make a reasonable effort to schedule leave so as not to unduly disrupt the employer's operations. If the claimant does not do so, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject, where applicable, to the approval of the health care provider.

3. If the necessity for leave is not foreseeable, or providing 30 days' notice is not possible, the individual shall provide the notice as soon as practicable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

4. A claimant's failure to schedule leave in accordance with C.R.S. § 8-13.3-505(4) or properly notify their employer or employers of the need for leave in accordance with C.R.S. § 8-13.3-505(5) does not change the Division's obligations to pay benefits on an approved claim within two weeks after the claim is filed under C.R.S. § 8-13.3-505(2) and these rules.

5. The Division shall not deny a claimant benefits for a failure to comply with C.R.S. § 8-13.3-505(4) or (5).

6. Employers may require the notice to contain the anticipated start time, anticipated duration, and where applicable, anticipated frequency of leave.

~~3.~~7. Such notification must be in the same manner as the claimant and employer typically communicate work availability, and absent unusual circumstances, must comply with the employer's usual and customary notice and procedural requirements for leave, unless those

requirements are contrary to rights, benefits, or protections afforded to the claimant under the FAMLI Act and its implementing regulations.

~~4.~~8. If an employer fails to post the program notice ~~required at~~in accordance with C.R.S. § 8-13.3-511 and these rules, the employer may not punish or discipline an employee for failing to provide notice in accordance with C.R.S. § 8-13.3-505(5).

~~5. Nothing in the FAMLI Act or its implementing regulations prohibit an employer in compliance with C.R.S. 8-13.3-511 from disciplining an employee for failing to provide notice in accordance with C.R.S. 8-13.3-505(5), so long as the discipline is not pretext for retaliation, discrimination, or interference in violation of C.R.S. 8-13.3-509.~~

~~6.~~9. By submitting an application for benefits, the claimant consents to the Division sharing with the employer, upon the employer's request, limited information necessary for the employer to coordinate FAMLI benefits with other benefits for which the claimant is eligible, in accordance with the information-sharing provisions of 7 CCR 1107-4, including the wage replacement amount and the reason for leave. The employer shall not request, and the Division will not provide, information that is not absolutely necessary for such benefit coordination, and a request for information not absolutely necessary for such benefit coordination may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509. The employer must store and maintain the confidentiality of such information in accordance with all applicable federal, state, and local laws and regulations, and failure to do so may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509.

~~7.~~10. Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for purposes of the FAMLI must be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FAMLI containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA (see 29 CFR 1635.9). If the Americans with Disabilities Act (ADA) is also applicable, such records should be maintained in conformance with ADA confidentiality requirements, except that:

A. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

B. First aid and safety personnel may be informed if the employee's physical or medical condition might require emergency treatment; and

C. Division and/or other government officials investigating compliance with the FAMLI Act should be provided relevant information upon request.

3.~~8~~9. Division Review of Applications

1. After an application is properly filed, the Division will adjudicate the claim within two weeks after filing.

2. The Division will contemporaneously notify the claimant and the employer of the outcome of the adjudication, and will provide information on how the claimant can appeal the outcome.

A. If the outcome is a denial of benefits, the Division will send separate notices to the claimant and to the claimant’s employer or employers. The notice to the claimant will explain the reason for the benefits denial and will identify information or documentation necessary to perfect their claim for benefits. The notice to the claimant’s employer or

employers will state that the claim for benefits has been denied, include the date of the denial, and include a description of the claimant's appeal rights.

B. If the outcome of the adjudication is to award benefits, the notices will include the leave start date, the leave duration, any denied segments of requested leave, the claimant's regular work schedule upon which benefits were based, and where applicable, a description of any approved reduced leave schedule or intermittent leave. Upon the employer's valid request, the Division will share with the employer the benefit amount and reason for leave, in accordance with 7 CCR 1107-3, Section 3.~~7.6~~8.9.

3. If the Division awards benefits, it will issue payment for the benefits within two weeks after the application is filed, and where applicable, at least every two weeks thereafter.

4. For applications approved in advance of the needed leave, the claimant must notify the Division once the leave begins.

5. A claimant may appeal an adverse claim determination pursuant to 7 CCR 1107-9.

6. An award of benefits does not preclude future investigation or oversight by the Division.

3.~~9.~~10. Covered Individual Obligations During Leave

1. A covered individual or their designated representative must notify the FAMLI Division within ten (10) days after the occurrence of any event, or the foreseeability of any event, that could change the amount or duration of approved leave, including but not limited to the following:

A. A change in the covered individual's need to care for a new child, including death of the child, placement of the child in another home, or a caregiving arrangement whereby someone other than the covered individual provides care;

B. A change in the covered individual's own serious health condition or need to care for a family member with a serious health condition, including ~~including~~ death of the family member or any increase or decrease in the care the covered individual must provide;

C. A change in the covered individual's need for exigency leave;

D. A change in the covered individual's need for safe leave;

E. Any event resulting in the covered individual no longer being localized to Colorado, pursuant to 7 CCR 1107-1 and its provisions regarding in-state status of employees;

F. An addition or loss of one or more jobs;

G. A change in the covered individual's regular work schedule; or

H. Any change in employment ~~that could result in non-coverage~~, including unemployment, retirement, ~~obtaining~~or any gained or lost source of employment ~~with the federal government, obtaining~~ or self-employment ~~with a local government that has declined participation pursuant to C.R.S. 8-13.3-522, or obtaining employment as an "employee" as defined by 45 U.S.C. section 351(d) who is subject to the federal "Railroad Unemployment Insurance Act," 45 U.S.C. section 351 et seq~~.

2. If a covered individual notifies the Division of an event that would increase the amount, duration, or frequency of benefits, the Division may require the covered individual to submit additional documentation in support of their claim.

3. If information reported to the Division results in an increase or decrease in the duration or frequency of leave awarded to a covered individual, the Division will promptly and contemporaneously notify the employer and the covered individual of the change.

4. If a covered individual receives a reduced leave schedule or intermittent leave, the covered individual must submit documentation sufficient to recertify their need for leave every six months, or as requested by the Division for claim management purposes. Upon recertification, the Division will notify the covered individual and the employer or employers from which the covered individual is taking leave, and will include in that notification any changes in the duration or frequency of the approved leave. If an individual fails to recertify, the approval for the leave will expire and the Division will notify the employer or employers from which the covered individual was taking leave.

5. A covered individual receiving intermittent leave must notify the Division of the individual absences in order to receive wage replacement benefits for the absences.

~~**3.10. Appeals**~~

~~**1. A claimant may appeal an adverse claim determination by submitting a completed "Appeal Request Form" to the FAMLI Division.**~~

~~**2. For the appeal to be considered, the FAMLI Division must receive the completed form within forty-five (45) days of the Division issuing its initial benefits determination. The Division may consider an appeal received later than forty-five (45) days after issuing its initial benefits determination, but within sixty (60) days after issuing its initial benefits determination, if the claimant submits with the Appeal Request Form evidence establishing good cause for the late appeal.**~~

~~**3. Upon receipt of a timely appeal, the Division will designate a hearing officer to preside over the matter. The hearing officer will have the power and authority to call, preside at, and conduct hearings. The hearing officer will have the power to administer oaths and affirmations, take depositions, certify to official acts, permit parties to participate by telephone, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with an appealed benefits determination.**~~

~~A. In case of a failure to obey a subpoena issued to any person by the hearing officer, upon application by the Division or its duly authorized representative, any court of this state has jurisdiction to issue to the person an order requiring him or her to appear before the hearing officer to produce evidence or give testimony touching the matter under appeal. The court may issue an order of contempt to a person who fails to obey the order.~~

~~B. Any failure to obey such an order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do in obedience to a subpoena of the Division or its duly authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.~~

~~4. The hearing may be bifurcated at the hearing officer's discretion.~~

~~5. The hearing officer, after affording the claimant a reasonable opportunity for a fair hearing, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The Division shall promptly provide the claimant with a~~

~~copy of the hearing officer's decision. The Division shall also contemporaneously provide a copy of the hearing officer's decision to the claimant's employer, with protected health information, the reason for leave, and wage replacement benefit amounts redacted. If the hearing officer's decision results in an award of benefits, the employer may request information necessary for coordination of benefits in accordance with 7 CCR 1107-3 Section 3.7.6.~~

~~6. The claimant may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five (35) days after the effective date of the hearing officer's decision. The hearing officer's decision constitutes a final agency action pursuant to C.R.S. 24-4-106. Judicial review is limited to appeal briefs and the record designated on appeal.~~

~~7. If the Division reverses a benefits denial upon either appeal or judicial review, the Division will pay the benefits within five (5) business days after the order awarding benefits.~~

~~8. Leave and employment protection provided by C.R.S. 8-13.3-509(1) is limited to the benefit duration provided by C.R.S. 8-13.3-505. An employer may not treat an absence that is subject to appeal or judicial review as an absence not protected by the FAMLI Act unless and until the leave is denied and the claimant exhausts any right to appeal or judicial review. However, if the outcome of an appeal or judicial review is pending outside of the benefits duration provided by C.R.S. 8-13.3-505, it does not extend the leave and employment protection provided by C.R.S. 8-13.3-509(1).~~

3.11. Employer Grievances

1. An employer may file a grievance with the Division if it has a good-faith belief, supported by evidence, that the Division has granted and/or paid family and medical leave insurance benefits to a claimant~~:~~ in~~A. In~~ an amount, duration, or frequency beyond which the claimant is entitled to under the FAMLI Act and its implementing regulations~~.; or~~

~~B. In a way that unduly disrupts the employer's operations.~~

2. The grievance must contain a detailed explanation of the employer's belief, and must include any evidence supporting that belief.

3. The Division will review all grievances in good faith, and may initiate an investigation as a result of the grievance.

4. If an investigation results in a change in the duration or frequency of a covered individual's paid family and medical leave insurance benefits, the Division will notify the covered individual and the covered individual's employer. If an investigation results in a change in the covered individual's wage replacement benefit amount, the Division will notify the covered individual, and the Division will also notify the employer if the covered individual's employer has made a valid request for benefit amounts in accordance with 7 CCR 1107-3, Section 3.7.6.

5. Excessive, frivolous, unsubstantiated, or bad-faith grievances may constitute discrimination, retaliation, and/or interference in violation of C.R.S. 8-13.3-509.

3.12. Fitness for Duty

Nothing in the FAMLI Act or its implementing regulations prohibits an employer from requiring a covered individual to provide certification of his or her fitness for duty prior to returning to work from a FAMLI-

approved absence, so long as such a requirement does not constitute discrimination, retaliation, or interference in violation of C.R.S. § 8-13.3-509.

3.13. Disqualification from Benefits

1. If the Division determines that a covered individual has willfully made a false statement or misrepresentation regarding a material fact in order to obtain family and medical leave insurance benefits, or has willfully failed to report a material fact in order to obtain family and medical leave insurance benefits, the covered individual will be disqualified from family and medical leave insurance benefits for one year after the effective date of the disqualification.

2. The Division will notify the claimant of any disqualification of benefits, and the claimant may appeal the disqualification in accordance with ~~the timelines and procedures of a benefits denial, as detailed in 7 CCR 1107-3, Section 3.10.~~7 CCR 1107-9.

3. If the claimant does not appeal the disqualification, the effective date of the disqualification shall be the earlier of:

   A. The day after the appeal deadline; or

   B. The day the Division receives notification from the claimant of the claimant's decision not to contest the disqualification.

4. If the claimant does not appeal the disqualification, or if the Division upholds the claimant's disqualification upon appeal, the Division will notify the claimant's employer or employers of the disqualification.

5. If the Division or a court upholds the claimant's disqualification upon appeal, the effective date of the disqualification shall become the date of the decision or order upholding the initial disqualification

6. If a claimant is disqualified from family and medical leave insurance benefits, the claimant's employer or employers remain obligated to remit premiums for the claimant in accordance with the FAMLI Act, and remain entitled to require premium contributions from the employee in accordance with the FAMLI Act.

3.14. ~~Erroneous Payments of Benefits~~Benefit Underpayments

~~1. If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the Division may seek repayment of benefits from the recipient in accordance with C.R.S. 8-13.3-513.~~

~~2. If the Division identifies a benefit overpayment, the Division will notify the claimant of the overpayment, and will notify the claimant of any amount for which it will seek repayment. If the Division seeks repayment of a benefit, the claimant may appeal the repayment decision in accordance with the timelines and procedures of a benefits denial.~~

~~3.~~ If the Division identifies a benefit underpayment, it will make a reasonable effort to obtain accurate contact information from the underpaid individual, and will issue the underpaid amount to the individual as soon as practicable. If the Division cannot obtain accurate contact information from the underpaid individual, the Division will remit the underpaid amount to the Colorado Department of Treasury in accordance with the Colorado Revised Uniform Unclaimed Property Act, C.R.S. § 38-13-101 et seq.

4. The Division may seek repayment of benefits in accordance with the procedures set forth in the FAMLI Act and its implementing regulations, which may include entering into an agreement with the claimant to repay the overpayment in installments.

Editor's Notes

History

New rule eff. 10/15/2022.

Notice of Proposed Rulemaking

Tracking number

2023-00614

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-4

Rule title

REGULATIONS CONCERNING COORDINATION OF BENEFITS AND REIMBURSEMENT OF ADVANCE PAYMENTS

Rulemaking Hearing

Date

10/17/2023

Time

04:30 PM

Location

Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Edits to 7 CCR 1107-4 for further clarification and alignment to the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING COORDINATION OF BENEFITS AND REIMBURSEMENT OF ADVANCE PAYMENTS

7 CCR 1107-4

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

4.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to coordination of benefits and reimbursement of advance payments.

3. Article 34 of C.R.S. Title 24 (2023~~2~~), Articles 4, 13.3, 40, and 70 of C.R.S. Title 8 (2023~~2~~), and ~~45~~29 U.S.C. section 2601 et seq. (2023~~2~~) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

4.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Employer-provided paid leave" means vacation leave, paid sick leave, paid personal leave, ~~paid parental leave,~~ and any other employer-paid time off. Employer-provided paid leave does not

include benefits under a short-term disability policy, long term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave.

3. "Health care benefits" as used at C.R.S. § 8-13.3-509(2) means benefits provided to an employee by an employer related to the improvement or maintenance of the employee's health, including but not limited to:

   A. Health insurance;

   B. Dental insurance;

   C. Vision insurance; and

   D. Mental health, counseling, and addiction services.

4. "Paid sick leave" has the same meaning as in C.R.S. § 8-13.3-402(8).

5. "Separate bank of time off solely for the purpose of paid family and medical leave" means time off provided by an employer which may only be used for a purpose listed in C.R.S. § 8-13.3-504(2), including but not limited to, paid parental leave, and paid leave under C.R.S. § 24-34-402.7, and is separate from employer-provided paid leave defined in 7 CCR 1107-4 Section 4.2.2.

6. No benefits received by an individual impact their eligibility for family and medical leave insurance benefits except for unemployment insurance benefits and workers' compensation benefits, as described in this rule.

4.3 FAMLI Benefits and Workers' Compensation Benefits

1. Benefits under the FAMLI Act and its implementing regulations are separate benefits claims from benefits under the Workers' Compensation Act of Colorado, C.R.S. § 8-40-101 et seq. or its implementing regulations (the "Workers' Compensation Act"). Regardless of an individual's status as a covered individual, if an absence from work is caused by circumstances that would entitle an individual to temporary indemnity benefits under the Workers' Compensation Act, the individual is not entitled to family and medical leave insurance benefits for that absence.

2. An individual applying for family and medical leave insurance benefits must disclose whether their serious health condition was caused by or otherwise related to a workplace injury or illness.

3. Health care providers, in completing a "Serious Health Condition Certification - Self Form," must disclose any information or belief that the individual's serious health condition was caused by or otherwise related to a workplace injury.

4. If either the individual applying for family and medical leave insurance benefits or the health care provider completing the "Serious Health Condition Certification - Self Form" indicates that the individual's serious health condition was caused by or otherwise related to a workplace injury, then:

   A. The application for benefits will not be considered filed in accordance with 7 CCR 1107-3;

B. The application will be closed; and

C. The application will be reopened for good cause if the individual applies for and is denied benefits via a final order under the Workers' Compensation Act with regard to the same serious health condition.

5. An individual must notify the FAMLI Division if they receive any benefits under the Workers' Compensation Act during a period of family and medical leave and may be required to complete a release for records relating to the workers' compensation injury.

6. If an individual is paid any temporary indemnity benefits under the Workers' Compensation Act during a period of family and medical leave, then any wage replacement benefits paid to the individual in association with the same job as the temporary indemnity benefits under the Workers' Compensation Act will be considered an overpayment of family and medical leave insurance benefits.

7. An individual's failure to disclose either a workplace injury related to an application for family and medical leave insurance benefits, or the receipt of benefits under the Workers' Compensation Act related to an injury that is related to the receipt of family and medical leave insurance benefits, may constitute grounds for disqualification of benefits pursuant to C.R.S. § 8-13.3-513.

4.4 FAMLI Benefits and Unemployment Insurance Benefits

1. Benefits under the FAMLI Act and its implementing regulations do not run concurrently with benefits under the Colorado Employment Security Act, C.R.S. § 8-70-101 et seq., or its implementing regulations ("CESA").

2. Regardless of an individual's status as a covered individual, ~~if an absence from work is caused by circumstances that would entitle an individual to benefits under CESA, the individual~~ the individual is not entitled to family and medical leave insurance benefits during any week the individual receives unemployment benefits pursuant to CESA for the same job.

3. An individual must notify the FAMLI Division if they apply for or receive any benefits under CESA during a period of family and medical leave.

4. If an individual is paid any benefits under CESA during a period of family and medical leave, then any family and medical leave wage replacement benefits paid to the individual ~~in association with~~for the same job during the same period of leave as the benefits received under CESA will be considered an overpayment.

5. An individual's failure to disclose either the application for or the receipt of benefits under CESA during any period of family and medical leave may constitute grounds for disqualification of benefits pursuant to C.R.S. § 8-13.3-513.

4.5 FAMLI Benefits and Employer-provided Paid Leave

1. The FAMLI Act and its implementing regulations do not entitle an employee to receive both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, except that pursuant to C.R.S. § 8-13.3-510(1)(c), an employer and an employee may

mutually agree that the employee may use any accrued employer-provided leave as a supplement to family and medical leave insurance benefits in an amount not to exceed the difference between the individual's wage replacement benefits under the FAMLI Act and the individual's average weekly wage.

A. If employer-provided paid leave is used to supplement FAMLI wage replacement benefits, the employer may: (1) convert the dollar amount of the supplement into the corresponding number of employer-provided paid leave hours; and (2) subtract those hours from the employee's balance of accrued and unused employer-provided leave.

B. The use of employer-provided paid leave to supplement FAMLI wage replacement benefits requires mutual agreement between the employer and the employee. If either the employer or the employee does not so mutually agree, employer-provided paid leave may not be used to supplement FAMLI wage replacement benefits. Any such agreement must be in writing and must be retained by the employer.

C. Mutual agreement between the employer and the employee is not necessary in order for an employee to use paid sick leave prior to receiving family and medical leave insurance benefits.

2. If an individual receives both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, and the employer and the employee have mutually agreed to supplement FAMLI wage replacement benefits with employer-provided leave, then any employer-provided paid leave in excess of the amount authorized by 7 CCR 1107-4 Section 4.5.1 may be considered an overpayment.

3. If an individual receives both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, and the employer and the employee have not mutually agreed to supplement FAMLI wage replacement benefits with employer-provided leave, then any employer-provided paid leave for the same hours absent may be considered an overpayment.

4. If an employer considers employer-provided paid leave to be an overpayment pursuant to either 7 CCR 1107-4 Sections 4.5.2 or 4.5.3, then:

A. The employer may recoup the overpayment by any legal means, including via one or more lawful deductions in accordance with C.R.S. § 8-4-105;

B. The employer must replenish the employee's bank of accrued employer-provided paid leave in an amount equal to the amount recouped as an overpayment; and

C. If the employer-provided paid leave so recouped as an overpayment is paid sick leave, an employer's failure to replenish the employee's bank of paid sick leave in accordance with 7 CCR 1107-4 Sections 4.5.4.B shall constitute a violation of the Healthy Families and Workplaces Act, C.R.S. § 8-13.3-401 et seq ("HFWA").

5. To the extent possible, the FAMLI Act and its implementing regulations shall not be read to reduce rights under HFWA and its implementing regulations, and HFWA and its implementing

regulations shall not be read to reduce rights under the FAMLI Act and its implementing regulations.

4.6 Employer-provided benefits during paid family and medical leave

1. The FAMLI Act and its implementing regulations only require an employer to maintain health care benefits in accordance with C.R.S. § 8-13.3-509(2), and do not entitle an employee to the continued accrual of employer-provided leave or any other benefits during a period of family and medical leave.

2. With regard to a covered individual's obligation to pay their share of the cost of health benefits pursuant to C.R.S. § 8-13.3-509(2), the employer may collect such payment via:

   A. Lawful deductions from employer-provided paid leave used to supplement FAMLI wage replacement benefits, in accordance with C.R.S. § 8-4-105;

   B. Lawful deductions from wages paid upon the employee's return to work, in accordance with C.R.S. 8-4-105;

   C. A repayment plan entered into by the employer and the employee; or

   D. Any other legal means.

3. Pursuant to C.R.S. § 8-13.3-509(8), if a local government employer has declined coverage pursuant to C.R.S. § 8-13.3-522, FAMLI does not require the local government employer to maintain health care benefits during a period of family and medical leave for its employees who elect coverage pursuant to C.R.S. § 8-13.3-514.

4. If an employer and an employee mutually agree to supplement FAMLI wage replacement benefits with paid sick leave, then the extent to which the employer must maintain benefits beyond the requirements in C.R.S. § 8-13.3-509(2) and Rules 4.6.1 and 4.6.2 is governed by HFWA.

4.7 FAMLI Benefits, short-term disability benefits, long-term disability benefits, and benefits from a separate bank of time off solely for the purpose of paid family and medical leave

1. If family and medical leave is taken for a reason that also qualifies for benefits from a short-term disability policy, long-term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave offered by the employer, then so long as the employer satisfies the notice requirement of C.R.S. § 8-13.3-510(1)(b), the employer may count both the wage replacement amount and the duration of the family and medical leave against the remaining benefit amounts and leave duration provided under such policy or bank of time. If there is no remaining benefit amount or leave duration under such policy or bank of time when the covered individual takes family and medical leave, then the employer or policy may not count either the wage replacement amount or duration against past or future balances.

2. If the employer requires family and medical leave insurance benefits to run concurrent with its short-term or long-term disability benefits, then the terms of the short-term or long-term disability policy shall govern whether the employer, the employee, or both must notify the policy's program

administrator of concurrent paid family and medical leave insurance benefits received by the employee.

4.8 FAMLI Benefits and the FMLA and the Family Care Act

1. As provided in C.R.S. § 8-13.3-510(1)(a), ~~Leave~~leave taken with wage replacement under the FAMLI Act that also qualifies as leave under the "Family and Medical Leave Act," as amended, Pub. L. 103-3, codified at 29 U.S.C. sec. 2601 et. seq., or part 2 of article 13.3 of title 8 runs concurrently with leave taken under the "Family and Medical Leave Act" or part 2 of article 13.3 of title 8, as applicable.

2. If the qualifying reason for family and medical leave does not constitute a qualifying reason for leave under the Family and Medical Leave Act, then the extent to which family and medical leave runs concurrently with leave taken under the Family and Medical Leave Act, if at all, is governed by the Family and Medical Leave Act and its implementing regulations.

3. If an employee requests leave under the Family and Medical Leave Act, the employer must notify the employee that they may be eligible for leave under the FAMLI Act.

4.9. Benefit Coordination Between Plans Providing Paid Family and Medical Leave Benefits

1. To allow for continuity of benefits for individuals covered under FAMLI or a private plan, the following rules will apply when an employer changes plans:

   A. The previous plan is required to continue paying all approved leave (continuous, intermittent and reduced leave schedules) through the duration previously approved or until a recertification is required, after which the claimant may reapply for benefits with their new plan. However, the previous plan does not have to continue to pay benefits where the provisions of 7 CCR 1107-3, Section 3.4.1 provide for the termination of approved leave.

   B. The previous plan shall provide any current benefit year duration utilization for any claimant previously covered under the previous plan by the employer to the new plan upon request.

2. If an individual has multiple jobs and is covered under multiple plans, the plans must provide information to each other to allow for accurate benefits to be paid to the covered individual. Each plan must calculate benefits based on leave taken under that plan, but proportionate to the covered individual's aggregate regular work schedule pursuant to 7 CCR 1107-3 so that total benefits do not exceed the maximum weekly benefit provided by C.R.S. § 8-13.3-506(1)(b), and total duration does not exceed the number of weeks provided by C.R.S. § 8-13.3-505(1).

4.10 Reimbursement of Advance Payments by Employers

1. An employer may qualify for a reimbursement of advance payments made to an employee when:

   A. The employer pays FAMLI wage replacement benefits in advance of an adjudication decision without using any employer-provided paid leave;

B. The employee applies for family and medical leave insurance benefits; and

C. The employer requests reimbursement from the Division prior to the Division's payment of benefits to the employee.

2. Any wage replacement benefits awarded pursuant to such an application are paid directly to the employer, not to the employee.

3. An employer assumes the risk that an employee for whom it paid FAMLI wage replacement benefits in advance will not apply for family and medical leave insurance benefits, that the FAMLI Division will award wage replacement benefits in an amount less than that which the employer advanced to the employee, or that the FAMLI Division will award no wage replacement benefits.

4. If an employer is not reimbursed, or is reimbursed an amount less than that which it paid an employee, it may not recoup from the employee the difference between the amount it paid and the amount it was reimbursed.

5. An employer's prepayment of benefits does not modify the appeal rights or procedures described in 7 CCR 1107-~~3~~9.

6. An employer must verify to the Division that it proactively paid the employee a payment designated as a family and medical leave benefit consisting of partial or full wage replacement prior to receiving reimbursement.

~~Editor's Notes~~

~~History~~

~~New rule eff. 12/30/2022.~~

~~Rules 4.2-4.9 eff. 07/15/2023.~~

Notice of Proposed Rulemaking

Tracking number

2023-00615

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-5

Rule title

REGULATIONS CONCERNING PRIVATE PLANS

Rulemaking Hearing

Date

10/17/2023

Time

04:30 PM

Location

Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Edits to 7 CCR 1107-5 for further clarification and alignment to the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING PRIVATE PLANS

7 CCR 1107-5

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

5.1. Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 ~~C.R.S.~~ et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections C.R.S. § 8-13.3-501 et seq. (the "FAMLI Act~~"), C.R.S."~~).

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to private plans.

3. Articles 4 and 13.3 of C.R.S. Title 8 (2023~~2~~) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

5.2. Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. These rules govern employees who are localized to Colorado pursuant to 7 CCR 1107-1, and govern employers and private plan administrators with regard to employees who are localized to Colorado pursuant to 7 CCR 1107-1. These rules do not govern employees who are not localized to Colorado pursuant to 7 CCR 1107-1, and do not govern employers or private plan

administrators with regard to employees who are not localized to Colorado pursuant to 7 CCR 1107-1.

3. "Additional conditions or restrictions" as used in C.R.S. § 8-13.3-521(1)(i) means material conditions or restrictions, and does not include incidental conditions or restrictions that do not interfere with, restrict, or lessen an employee's rights under FAMLI Act.

4. "Adverse determination" means either a complete denial of benefits, or a determination to award a claimant benefits in a frequency or duration less than the claimant requested, or a determination to award a wage replacement amount less than what the claimant believes they are entitled to under the FAMLI Act and its implementing regulations.

5. "Insurer approved by the state" as used in C.R.S. § 8-13.3-521(2)(c) and these rules means an insurance provider licensed by the Division of Insurance within the Colorado Department of Regulatory Agencies, and in good standing with the Division of Insurance in accordance with its regulations.

6. "Private plan administrator" means an entity or individual tasked with the administration of an approved private plan, and can include without limitation the employer, a third-party administrator, a labor union, and/or an insurer approved by the state.

7. "Rights, protections, and benefits provided to employees under this part 5" as used in C.R.S. § 8-13.3-521(1) includes any rights, protections, and benefits conferred by rules promulgated under the FAMLI Act and its implementing regulations.

~~8. "Wages subject to premiums under this part 5" as used in C.R.S. 8-13.3-503(3)(a) include wages paid to an employee by an employer with an approved private plan, wages paid to an employee by an employer under the state plan, and income earned from either self employment or local government employment by individuals who have elected coverage pursuant to C.R.S. 8-13.3-514.~~

8. "Wages" has the same meaning as in 7 CCR 1107-1, Section 1.2.9.

5.3. Private Plan Requirements

1. An employer may comply with the FAMLI Act by providing an approved private plan that provides all of the same rights, protections and benefits provided to employees by the FAMLI Act and its implementing regulations, including but not limited to:

   A. Allowing family and medical leave insurance benefits to be taken for all purposes specified in C.R.S. § 8-13.3-504(2);

   B. Providing family and medical leave insurance benefits to a covered individual for any of the purposes, including multiple purposes in the aggregate, as set forth in C.R.S. § 8-13.3-504(2), for the maximum number of weeks required in C.R.S. § 8-13.3-505(1) in a benefit year as defined in 7 CCR 1107-3 Section 3.2.4;

C. Allowing family and medical leave insurance benefits under C.R.S. § 8-13.3-504(2)(b) to be taken to care for any family member as defined under C.R.S. § 8-13.3-503(11) and 7 CCR 1107-3 Section 3.4.6;

D. Allowing family and medical leave insurance benefits under C.R.S. § 8-13.3-504(2)(c) to be taken by a covered individual with any serious health condition;

E. Allowing family and medical leave insurance benefits under C.R.S. § 8-13.3-504(2)(e) to be taken for any safe leave purposes;

F. Providing a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by C.R.S. § 8-13.3-506(1)(a);

G. Providing a maximum weekly benefit for all family and medical leave insurance benefits of at least the amount specified in C.R.S. § 8-13.3-506(1)(b);

H. Allowing a covered individual to take intermittent leave as authorized by C.R.S. § 8-13.3-505(3) or a reduced leave schedule pursuant to 7 CCR 1107-3;

I. Imposing no additional conditions or restrictions on family and medical leave insurance benefits, or paid family and medical leave taken in connection therewith, beyond those explicitly authorized by the FAMLI Act or regulations issued pursuant to the FAMLI Act;

J. Allowing any employee covered under the private plan who is eligible for family and medical leave insurance benefits under the FAMLI Act to receive benefits and take paid family and medical leave under the private plan; and

K. Providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state plan under C.R.S. § 8-13.3-507.

2. An approved private plan shall be in the form of either self-insurance or a policy obtained through an insurer approved by the state.

3. Private plans must offer benefits to all covered individuals employed by the employer. Nothing prohibits a private plan from covering multiple employers' workforces; however, if an employer intends to meet its obligations under the FAMLI Act and its implementing regulations with an approved private plan, it must apply for private plan approval, pay the administrative fee described in these rules, pay the maintenance fee described in these rules, and otherwise comply with these rules regardless of how many other employers use or intend to use the same private plan to meet their obligations under the FAMLI Act and its implementing regulations.

4. Private plans must not impede the ability of an employer, an employee, or a private plan administrator to comply with the provisions of the FAMLI Act or its implementing regulations.

5. The earnings requirement necessary to be a "covered individual" pursuant to C.R.S. § 8-13.3-503(3)(a)(I) is not "per-employer" and private plans may not deny or otherwise limit benefits to which the covered individual would otherwise be entitled.

6. Employers who are approved to ~~self-insure to~~ provide FAMLI benefits under a self-insured plan must establish and maintain a separate account: (1) into which all employee contributions are deposited and kept; and (2) from which all benefits must be paid, and from which private plan administrative costs may be paid. Employers may not withdraw from the account except to pay benefits and private plan administrative costs. Upon any voluntary or involuntary termination of a self-insured plan, the employer must remit the remaining balance of the account to the Division.

7. All private plans must provide for the confidentiality of employee information related to FAMLI benefits, and such information must be kept separate from all other employment records.

8. By submitting an application for benefits to a private plan administrator, the claimant consents to the private plan administrator sharing with the employer, upon the employer's request, limited information necessary for the employer to coordinate FAMLI benefits with other benefits for which the claimant is eligible, in accordance with the information-sharing provisions of 7 CCR 1107-4, including the wage replacement amount and the reason for leave. The employer shall not request, and the private plan administrator shall not provide, information that is not absolutely necessary for such benefit coordination. An employer's request for information not absolutely necessary for such benefit coordination, or a private plan administrator's provision of information not absolutely necessary for such benefit coordination, may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509. The employer must store and maintain the confidentiality of such information in accordance with all applicable federal, state, and local laws and regulations, and failure to do so may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509.

9. All private plans must provide that an employee shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the employee's claim for benefits.

10. With regard to forms that claimants and/or health care providers will be required to complete in relation to a claim for benefits, all private plans shall either utilize the forms provided by the Division, or utilize forms that are no more onerous than the forms provided by the Division.

11. Private plans must determine whether an application for benefits is properly filed, and must do so in a manner consistent with 7 CCR 1107-3 Section 3.6.~~7~~8.

12. In accordance with C.R.S. § 8-13.3-521(7), in addition to the initial administration fee described in these rules, starting in the first calendar quarter of 2025, an employer with an approved private plan must pay the Division an annual maintenance fee to cover amounts expended by the division for costs arising out of the prior year's administration of private plans. The Division will calculate each employer's maintenance fee based on costs arising out of the administration of the employer's private plan, and will notify the employer of the annual maintenance fee amount and its due date.

5.4. Application Requirements and Effective Date of New Private Plans

1. Private plans must be approved by the Division prior to implementation. Private plans in the form of an insurance policy issued by an insurer approved by the state must first be submitted to the Colorado Division of Insurance for approval.

2. To obtain approval of a private plan, an employer must first submit a completed application for private plan approval to the Division. Applications may be submitted at any time, and the Division will review applications as they are received.

3. An application for private plan approval must include:

   A. The employer's federal employer identification number ("EIN");

   B. The employer's name;

   C. The employer's business address;

   D. The employer's mailing address;

   E. A designated contact person, with that person's name and contact information;

   F. A copy of the employer's self-insured private plan, or if the private plan is in the form of an insurance policy provided by an insurer approved by the state, a copy of that insurance policy form;

   G. If the private plan is in the form of self-insurance, a surety bond, issued by a surety company authorized to transact business in Colorado, in an amount equal to one year of total premiums calculated pursuant to C.R.S. § 8-13.3-507, along with payroll documentation supporting the surety bond calculation;

   H. If the private plan is in the form of self-insurance, attestation that the employer has complied with the separate account requirements at 7 CCR 1107-5 Section 5.3.6;

   I. An attestation, completed by the employer, that the employer understands, and the private plan satisfies, the requirements set forth in the FAMLI Act and its implementing regulations;

   J. An attestation, completed by the employer, that the forms used by the employees and/or health care providers will be no more onerous than the forms used by employees and/or health care providers under the state plan;

   K. A copy of the posted notice required by 7 CCR 1107-5 Section 5.9.4;

   L. Other information as required on the application form; and

   M. An administration fee of:

      1. $500.00 for private plan applications received through 2024; and

      2. For private plan applications received in 2025 and later, the amount determined by the Director pursuant to C.R.S. § 8-13.3-521(7), and published on the Division's website.

4. Approved private plans must take effect no earlier than sixty days after the date of application so that the Division has sufficient time to review the application, and the employer has sufficient time to provide notice to employees in accordance with 7 CCR 1107-5 Section 5.9.

5. The employer must submit to the Division any forms to be used by employees and/or health care providers under the approved private plan at least thirty (30) days prior to making them available to employees for usage.

6. Employers remain liable to the FAMLI Division for premiums on wages paid until the effective date of the approved private plan, and remain entitled under C.R.S. § 8-13.3-507(5) to withhold the employees' share of premiums from wages paid until the effective date of the approved private plan. Throughout the duration of an approved private plan, employers may withhold premiums deductions from employees in an amount not to exceed the amount authorized by C.R.S. § 8-13.3-507(5), if such a deduction is pursuant to the terms of the approved private plan.

7. Employees remain eligible for benefits under the FAMLI Act on and after January 1, 2024, and until the effective date of the approved private plan.

~~8~~

A. Benefits awarded to an employee must be paid by the plan that awarded the benefits for the full duration of the employee's approved FAMLI benefits claim, pursuant to 7 CCR 1107-4 Section 4.9.1.A. In the event of an approved private plan failing to pay benefits due to an insurance carrier's insolvency, if the policy is covered by an insurance guaranty association, the claims will be paid by the insurance guaranty association pursuant to their rules and procedures. If the policy is not covered by a guaranty association, then the employer will become responsible for paying all claims approved by the private plan prior to the date of insolvency. In either event, the employer shall immediately notify the FAMLI Division of the insolvency, the notice requirements under Section 5.14 of these rules are waived, and the employer will be deemed covered under the state system.

B. If a self-insured employer fails to pay benefits as awarded and private plan approval is withdrawn pursuant to Section 5.16 of these rules, the Division shall execute upon the surety bond and use the proceeds and the remaining funds in the separate account established pursuant to Section 5.3.6 of these rules to pay benefits due for claims arising prior to the date of termination.

C. If an employer fails to pay benefits as required by 5.4.8.A or if the surety bond is insufficient to pay the benefits under 5.4.8.B, those claims shall be paid by the FAMLI Division. The~~. The Division, in its sole discretion, may pay benefits to a covered individual that a private plan was obligated to pay, if the Division determines that (1) some benefits went unpaid; and (2) it is unlikely that the covered individual will otherwise be paid such benefits. If the Division does pay benefits to a covered individual that a private plan was obligated to pay, then the~~ employer is indebted to the Division for such amounts, and the Division may pursue all legal means to collect such amounts from the employer.

5.5. Review of Private Plan Applications

1. If the Division does not approve an application for a private plan, the Division shall notify the applicant in writing of any issues that must be addressed in order for the private plan application to be approved.

2. The applicant may request to meet and confer with the Division to discuss the issues and how they can be addressed, and the Division shall make a good faith effort to schedule a prompt meeting with the applicant at a convenient time and in a convenient manner.

3. For applications for self-insured private plans, the Division will make available a template self-insurance private plan that satisfies the approval requirements for such private plan applications.

4. The applicant may submit another application for private plan approval after sufficiently addressing any identified issues.

5. No additional administrative fee will be assessed for an application received within one year of the initial application for private plan approval.

6. Each application is a separate application for purposes of determining the effective date of an approved private plan.

7. The outcome of a private plan application is ~~not~~ subject to an appeal, in accordance with 7 CCR 1107-9.

5.6. Surety Bond Requirement for Employer Self-Insured Private Plan

1. The Division will only accept a surety bond issued by a surety company authorized by the Colorado Insurance Commissioner to transact such business in Colorado.

2. The bond amount must be an amount equal to one year of total premiums calculated pursuant to C.R.S. § 8-13.3-507.

3. The bond amount must be based on four quarters of projected wages, as represented by:

   A. The previous four quarters of wages reported by the employer to the Division, in accordance with 7 CCR 1107-3 Section 3.3.2; or

   B. If the employer has not reported four quarters of wages the Division, the previous four quarters of wages reported by the employer to the Colorado Unemployment Insurance Division, in accordance with 7 CCR 1101-2, Section 7.2.4; or

   ~~B~~C. If the employer has not reported wages to FAMLI or the Colorado Unemployment Insurance Division for four quarters, the previous four quarters of wages paid to its employees; or

   ~~C~~D. If ~~neither~~none of the above is possible, a reasonable estimate of one year of projected wages supported by documentation.

4. The Division may disapprove a private plan if an employer fails to provide documentation the Division deems necessary for purposes of calculating an appropriate surety bond amount.

5. If an employer has reason to believe that the amount calculated pursuant to Section 5.6.3 of this rule does not accurately reflect its projection of the next year of wages, the employer must notify the Division and provide an explanation as to why, along with any supporting documentation.

6. A surety bond shall be issued on a form prescribed by the Division.

7. The bond must include a statement that the bonding company must give ninety (90) days' notice of its intent to terminate liability to both the principal and the Division, except that if the bonding company is terminating liability because it is issuing a replacement bond, it may do so without providing prior notice. In the event of a replacement bond, the surety company and the employer must notify the Division no later than fourteen (14) days after its effective date.

8. The employer must maintain surety bond coverage for the duration of its approved self-insured private plan.

9. The Division will review the bond annually to ensure that the amount corresponds with the wage projections as described in this rule. The employer must provide the Division with any documentation necessary to review the bond amount. If the Division determines that the bond amount must be increased, the employer must do so to maintain private plan approval. If the Division determines that the bond amount exceeds the projected wages as described in Section 5.6.3 of this rule, the employer may reduce the bond amount to match such projected wages.

10. The Division may execute on and collect the bond amount if the employer's private plan approval is terminated, voluntarily or involuntarily, pursuant to these rules.

    A. The Division will execute on and collect the entire bond amount, less any funds received from the employer within 30 days after the effective date of the termination of the private plan approval.

    B. Funds so received by the Division from the employer and/or the surety will be deposited into the fund, and if applicable, will be credited toward the employer's obligations under Section 5.17 of this rule.

5.7. Duration of Private Plan Approval; Renewal Requirements

1. Unless otherwise authorized by the Division pursuant to these rules, private plan approval expires after eight years from the date that the private plan went into effect.

2. Beginning in November 2024 and every November thereafter, employers with approved private plans must annually submit an attestation to the Division that their contact information is accurate and their approved private plan continues to satisfy the requirements of the FAMLI Act and its implementing regulations. Such attestation must be in the form and manner specified by the Division on its website. Failure to submit an attestation may result in the Division's withdrawal of the private plan approval.

3. Employers seeking renewal of their private plan approval must submit an application for renewal at least sixty (60) days before the expiration of their private plan approval. The Division will send to the employer's email address an expiration notice at least ninety (90) days before the expiration of the private plan's approval.

5.8. Partial Colorado Workforce Coverage Prohibited

If an employer meets its obligations under the FAMLI Act and its implementing regulations with an approved private plan, it must cover all of the employer's employees localized in Colorado in accordance with 7 CCR 1107-1.

5.9. Notice to Employees of Private Plan Benefits and Administration

1. No later than thirty (30) days before the effective date of an approved private plan, an employer must deliver to each of its employees a written notice of its election and approval by the Division to offer a private plan in lieu of participating in the state plan. For an employee whose start date is later than thirty (30) days before the effective date of an approved private plan, an employer must deliver the written notice to the employee immediately upon hire.

2. The written notice may be delivered to the individual employee electronically, in person, or via mail.

3. The written notice must include:

    A. The effective date of the approved private plan;

    B. A description of the private plan's wage replacement benefits;

    C. A description of the private plan's leave and employment protection benefits;

    D. A description of how employee eligibility is determined;

    E. A description of how any employee contributions are calculated and collected;

    F. A description of how an employee may file a claim for benefits under the approved private plan;

    G. A notification to the employee of the employee's appeal rights pursuant to the FAMLI Act, and if applicable, of the employee's optional alternative to appeal a benefits determination to the private plan administrator;

    H. Contact information for the FAMLI Division and the plan administrator; and

    I. A notification to the employee ~~which explicitly lists and explains all~~ of the employee's rights under C.R.S. § 8-13.3-509.

4. In addition to delivering the written notice to each of its employees localized in Colorado, an employer must post a notice containing the same information.

    A. The notice must be posted in a conspicuous and accessible place in each establishment where employees are employed.

    B. The notice must be in English, Spanish, and in any language that is the first language spoken by at least five percent of the employer's Colorado workforce.

C. If the employer does not maintain a physical workplace, or an employee works remotely, the employer may satisfy the posting requirement by sending the notice via email or through a conspicuous posting in a web-based or app-based platform that the employee regularly uses.

5.10. Collection of Employee Contributions Authorized

Where an employer lawfully deducts premium contributions from an employee's wages pursuant to C.R.S. § 8-13.3-507(5) or the terms of an approved private plan, then for the purposes of compliance with C.R.S. § 8-4-105, premium contributions are considered wages paid for the benefit on the employee, and collecting such premium contributions does not violate C.R.S. ~~8-4-105(2).~~§ 8-4-105(2). If an employer deducts premium contributions from an employee's wages, and subsequently receives a refund of premiums paid from the private plan, the employer must distribute the refund proportionately and in accordance with how it was collected.

5.11. Calculation of Benefits Under Private Plans

Private plans must provide a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by 7 CCR 1107-3 Section 3.5.~~1.A.~~

5.12. Recordkeeping and Reporting Requirements; Division Access to Records

1. A private plan administrator must keep and maintain documentation of the following for a minimum of six years:

   A. Applications for benefits;

   B. Benefits paid, including payment dates and amounts;

   C. Adverse determinations of benefits applications;

   D. Internal appeals received;

   E. The outcome of internal appeals received; and

   F. Documents, including wage data, containing the information upon which benefits determinations were based.

2. An employer must keep and maintain~~,~~ documentation of the following for a minimum of ~~six~~four years~~, records of any premium contributions it collected from employees.~~:

~~3. For the first three years~~

   A. Records of any premium contributions it collected from employees.

   B. Wage records.

3. Starting in 2025, the~~an approved private plan, the~~ private plan administrator must, on ~~a quarterly~~an annual basis, submit to the Division a private plan administration summary of the previous calendar ~~quarter~~year. The private plan administration summary must be submitted no

later than ~~the last day of the month~~February 28th immediately following the end of the calendar ~~quarter~~year addressed by the summary. ~~After an approved private plan has been effective for three years, the private plan administrator may submit its private plan administration summary annually, which will be due on January 30 of each year.~~ Information received by the Division in the private plan administration summary will be aggregated so that the Division can comply with its reporting obligations at C.R.S. § 8-13.3-519. The private plan administration summary must include aggregate summaries of the following:

A. ~~Benefits~~Total number of benefits applications received;

B. Total number of benefit applications approved, pending, denied, or closed.

C. Total benefit~~Benefit~~ amounts paid;

~~C~~D. Total number of employees covered under private plan

E. Employer Zip Code

F. The purposes for approved leave;

~~D~~G. The gender, race, ethnicity and preferred language of individuals for whom leave was approved, and for whom leave was denied in whole or in part;

~~E~~H. The average weekly wage of individuals for whom leave was approved;

~~F~~I. If leave was taken to care for a family member, the relationship of that family member to the beneficiary;

~~G. Adverse determinations~~

J. Total number of grievances~~benefits applications;~~

~~H. Appeals~~ received~~; and~~ from employers;

~~I. The outcome~~

K. Total number of appeals received; and

L. Total number of appeals affirmed, reversed, modified, or withdrawn.

4. For private plans in the form of an insurance policy that covers multiple employers, the aggregate summaries included in the private plan administration summaries may be aggregated across employers.

5. Within twenty-eight (28) days of the Division's written request, a private plan administrator or an employer with an approved private plan shall provide any documentation either is obligated to maintain pursuant to 7 CCR 1107-5 Section 5.12. If the employer or private plan administrator requests an extension and provides good cause for the extension, the Division may extend the 28-day deadline. If the employer or private plan administrator does not provide the requested documentation by the deadline, the Division may withdraw its approval of the private plan.

5.13. Modification of a Private Plan

1. An employer shall notify the Division, in writing, of any material change to an approved private plan within sixty (60) days before the change is to take effect. The notification shall include:

    A. A detailed explanation of all material changes; and

    B. A statement describing how any material changes do not reduce benefits or impose new requirements on covered employees beyond what would be provided and required under the state plan.

2. The Division will review the material change to the approved private plan, and will determine whether the material change impacts private plan approval. The Division will make a good faith effort to confer with the employer regarding any impact to continued private plan approval, and to notify the employer of its determination within thirty (30) days of the employer's notification to the Division. In no event may an employer make a material change without first obtaining Division approval and providing at least thirty (30) days' notice to its employees.

3. Division review of material changes to a private plan may impact the calculation of an employer's annual maintenance fee.

4. Material changes to an approved private plan include, but are not limited to:

    A. Changing from one private plan to another;

    B. Changing the private plan to reduce benefits or leave types;

    C. Changing the private plan to increase claims adjudication timeframes;

    D. Changing the private plan to increase benefits payment timeframes; or

    E. Changing the private plan to increase the information collected from employees to apply for or receive benefits.

5. Material changes to an approved private plan do not include:

    A. Updating the private plan benefits application form in a way that does not make the form more onerous than the state's benefits application form;

    B. Changing business or contact information;

    C. Correcting typographical errors; or

    D. Increasing benefits or leave types.

6. A change to an approved private plan will not extend the duration of its approval.

5.14. Voluntary Termination of an Approved Private Plan by an Employer

1. An employer may terminate its approved private plan by notifying the Division in writing at least thirty (30) days before the voluntary termination's effective date.

2. The employer must notify employees of the voluntary termination no later than thirty (30) days before the termination's effective date.

3. An employer must continue the approved private plan's coverage through the termination's effective date. If an employer does not continue the approved private plan's coverage through the termination's effective date, the Division shall assess against the employer a fine, per employee per day the employee was not covered through the termination's effective date. The fine amount will ~~equal~~be the ~~employer's and employee's~~lesser of (a) the daily total premium amount ~~for a year~~per employee, calculated by using the total annual premium amount paid by the employer and employee, divided by 365~~, not to exceed~~ or (b) $500.00.

5.15. Expiration of an Approved Private Plan

If an employer does not renew its private plan in accordance with 7 CCR 1107-5 Section 5.7, the employer will be deemed to have voluntarily terminated its private plan, and will be subject to the requirements in 7 CCR 1107-5 Section 5.14.

5.16. Involuntary Termination of a Private Plan by the Division

1. The Division will withdraw approval for a private plan when terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to, the following:

   A. Failure to pay benefits in the amount and duration required by the FAMLI Act and its implementing regulations;

   B. Failure to pay benefits in the amount and duration required by the private plan, where the private plan provides benefits in a greater amount or duration than is required by the FAMLI Act and its implementing regulations;

   C. Failure to pay benefits within the timeframes and in the manner specified by the FAMLI Act and its implementing regulations;

   D. Failure to maintain an adequate surety bond in accordance with the FAMLI Act and its implementing regulations;

   E. Misuse of private plan money, including the use of private plan funds for anything other than paying out and administering benefits, or transferring private plan funds from an account established pursuant to 7 CCR 1107-5 Section 5.3.6 to any account not exclusively for holding private plan funds;

   F. Failure to submit reports or comply with other compliance requirements as required by the FAMLI Act and/or its implementing regulations;

   G. Failure to pay the annual maintenance fee; or

   H. Failure to otherwise comply with the FAMLI Act and its implementing regulations.

2. The Division will conclude that the terms or conditions of the plan have been violated, and therefore withdraw approval of the private plan, if the Division determines that the employer or the private plan administrator has repeatedly violated the private plan's terms and/or the FAMLI Act and its implementing rules, has willfully or recklessly violated the private plan's terms and/or the FAMLI Act or its implementing rules, or has otherwise violated the private plan's terms and/or the FAMLI Act or its implementing rules in such a way that indicates a widespread compliance concern.

3. If the Division withdraws approval of an employer's private plan, the Division will issue to the employer and the private plan administrator a Notice of Withdrawal of Private Plan Approval ~~with an effective date fourteen days after the date of the Notice.~~. The employer may appeal that withdrawal to the Division pursuant to 7 CCR 1107-9. If the employer does not appeal the withdrawal, the effective date is the day following~~before its effective date by filing an appeal with the Division using~~ the appeal deadline specified by 7 CCR 1107-9.~~form published on the Division's website.~~ The Division will ~~designate a hearing officer to preside over~~stay the withdrawal of approval during an appeal.~~matter, and the hearing officer will have all of the same authority and obligations as described at 7 CCR 1107-3 Section 3.10. The employer may seek judicial review of a hearing officer's determination in accordance with C.R.S. 8-13.3-521(5).~~

5.17 Employer Obligations After Termination of Private Plan Approval

1. Within seven (7) days of the effective date of a voluntary or involuntary termination of private plan approval, the employer must notify all Colorado employees of the termination, notify all Colorado employees that they are under the state plan as a result of the termination, and deliver to all Colorado employees the information contained in the program notice described at C.R.S. § 8-13.3-511.

2. If an employer's workforce becomes covered by the state plan because the employer's private plan approval was voluntarily or involuntarily terminated, the employer must remain covered by the state plan and pay premiums to the state for a period of at least three (3) years and deliver to the Division all remaining amounts in the account established pursuant to 7 CCR 1107-5, Section 5.3.6.

3. If the employer returns to coverage under an approved private plan before the end of three (3) years, the employer must pay to the state the amount of premiums it would have been required to remit pursuant to C.R.S. § 8-13.3-507(5) through the remainder of the three-year period. The employer may choose to either remit the remainder as a lump sum based on a projection determined by the Division, or may continue to remit premiums based on actual wage data on a quarterly basis through the remainder of the three-year period.

5.18. Division Oversight of Private Plans

1. The Division may, at any time at its sole discretion, initiate a review of a private plan to determine whether the private plan is in accordance with the FAMLI Act and its implementing regulations.

2. Upon initiation of a review and request by the Division, the private plan administrator and the employer shall provide all information and documentation necessary to conduct the review.

3. The Division will ensure confidentiality of records.

4. Information and documentation requested by the Division must be provided within fourteen (14) days after the request. The Division may extend the deadline where good cause for such an extension exists.

5. Failure to ~~cooperate with~~provide information and documentation necessary for the Division's review of a private plan will result in the Division's withdrawal of the private plan's approval.

5.19. Appeals

1. Claimants under an approved private plan may appeal ~~a~~ any adverse determination made by the private plan administrator pursuant to 7 CCR 1107-9, including:

   A. A private plan administrator's failure to issue a determination within two weeks of filing;

   ~~, and may also appeal the following determinations:~~

   ~~A.~~ B. A private plan's adverse determination of a claim for benefits;

   ~~B~~C. A private plan's failure to pay the full claim it approved;

   ~~C~~D. A private plan's closure of a claim based on its determination that the claim was not properly filed in accordance with 7 CCR 1107-3 Section 3.6.7;

   ~~D~~E. A private plan's determination that an employee is disqualified from benefits due to its conclusion that the employee willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits; or

   ~~E~~F. A private plan's identification and/or collection of an overpayment.

2. A claimant under an approved private plan may file an appeal with the Division, or may choose to file an appeal with the private plan administrator if the private plan allows for a discretionary internal appeal mechanism. Regardless of whether there is an internal private plan appeal process, a claimant under an approved private plan may choose to file an appeal directly to the FAMLI Division in accordance with 7 CCR 1107-~~3, Section 3.10~~9.

3. If a claimant chooses to file an appeal with the private plan administrator, the claimant may appeal the outcome of that appeal to the Division in accordance with 7 CCR 1107-~~3, Section 3.10~~9.

~~4. If a claimant appeals to the Division a determination under an approved private plan, either the claimant or the private plan administrator may seek judicial review of the Division's determination in accordance with C.R.S. 8-13.3-521(5).~~

~~5~~4. If a covered individual appeals a benefit determination under an approved private plan, and the Division determines that the covered individual is entitled to additional payment, the Division will notify the private plan administrator, and the private plan administrator must pay the additional amount within the same time frames the Division would have to pay additional amounts pursuant to 7 CCR 1107-~~3, Section 3.10.~~9.

~~6~~5. The Division will specify the benefit amount due and when such additional payments are due in its determination.

~~7~~6. If the Division overturns or modifies a benefits determination under an approved private plan, and the private plan administrator seeks judicial review of the Division's decision, the private plan administrator must still pay the additional amount within the timeframes above. However, if the Division's determination is overturned or modified by a court upon judicial review, the private plan administrator may:

A. Deduct any overpayment from an employee's wages in accordance with C.R.S. § 8-4-105, if the private plan administrator is the employee's employer;

B. Enter into a repayment plan with the employee; or

C. File suit against the employee in a court of competent jurisdiction to recover the overpayment.

5.20. Fines

1. If, upon appeal or judicial review, the Division or a court determines that the private plan administrator owes additional payments to a covered individual, and the private plan administrator fails to issue payment of the benefits by the date or dates specified by the Division or the court in its determination, then the Division may assess fines upon the private plan administrator.

2. Each day after the due date that additional payments owed by a private plan to an individual claimant go unpaid constitutes a separate violation.

3. The Division may assess fines as follows:

A. For the first day of nonpayment after the due date, a fine of up to $100.00 per individual claimant;

B. For the second day of nonpayment after the due date, a fine of up to $200.00 per individual claimant;

C. For the third day of nonpayment after the due date, a fine of up to $300.00 per individual claimant;

D. For the fourth day of nonpayment after the due date, a fine of up to $400.00 per individual claimant; and

E. For the fifth day of nonpayment after the due date, and for every additional day thereafter, separate fines of up to $500.00 per day per individual claimant.

5.21. Approved Private Plans Effective On or Before January 1, 2024

1. If an employer remits premiums to the Division in 2023, and later obtains approval of a private plan with an effective benefits date no later than January 1, 2024, the employer may apply to the Division for reimbursement, and the Division will, within 90 days, reimburse the employer the

amount of premiums paid in 2023, minus the required private plan administration fee described in this rule if the employer did not already pay it to the Division.

2. If an employer has collected premium contributions from its employees in 2023, and the Division later reimburses the employer for premiums remitted in 2023, the employer must reimburse its employees for any premium contributions collected, unless the terms of the approved private plan allow the employer to collect premiums from employees in 2023, in which case the employer need not reimburse employees for premium contributions collected.

   A. If an employer must reimburse employees under this Section, and one or more of those employees is no longer employed by the employer, the employer must identify those employees in its application for reimbursement. The Division will issue the refund to the employer, minus the premiums paid by those employees, and will make reasonable efforts to issue the refund directly to those employees. If an employee leaves employment after the employer submits an application for reimbursement, but before the Division issues the reimbursement, the employer must refund to the Division the amount of that reimbursement that equals premiums paid by that employee, so that the Division can issue a refund to that employee.

   B. If the Division cannot locate an employee to whom it must pay a refund, the Division will make the amount available as unclaimed property through the Department of Treasury.

3. Employers must apply to the FAMLI Division for a private plan exemption approval by October 31, 2023 to ensure an effective date of January 1, 2024.

~~Editor's Notes~~

~~History~~

~~New rule eff. 12/30/2022.~~

Notice of Proposed Rulemaking

Tracking number

2023-00616

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-6

Rule title

REGULATIONS CONCERNING PROGRAM INTEGRITY

Rulemaking Hearing

Date

10/17/2023

Time

04:30 PM

Location

Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Edits to 7 CCR 1107-6 for further clarification and alignment to the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING PROGRAM INTEGRITY

7 CCR 1107-6

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

6.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "Act" or "FAMLI").

2. The general purpose of these rules is to exercise authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to program integrity.

3. Article 13.3, Title 8 (2023), Article 42, Title 8 (2023), Article 70, Title 8 (2023), and Article 12, Title 5 (2023) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

6.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the Act have the same definition as they do under the Act.

2. "Benefit Overpayment" means a payment in excess of the amount authorized by the Act and its implementing regulations.

3. "Claimant" has the same definition as 7 CCR 1107-3 Section 3.2.7._

4. "Correct Address" has the same definition as 7 CCR 1107-8 Section 8.2.6~~5~~.

5. "Determination ~~Letter~~" has the same ~~definition~~meaning as defined in 7 CCR 1107-~~8~~9, Section ~~8~~9.2.7.

6. "Equity and Good Conscience" means fairness as applied to each individual case after considering the totality of the circumstances. When determining whether an individual or entity shall pay an amount owed to the Fund (e.g. benefit overpayment, fines or interest), the Division or private plan administrator may consider the following factors to determine equity and good conscience, including, but not limited to:

   A. The individual's financial condition required that the amount owed be spent on reasonable and necessary living expenses;

   B. The individual's household income is below 200% of the federal poverty income guidelines;

   C. The individual or entity lacks the ability to pay the amount owed based on prior income level, current income and assets, and future earnings potential;

   D. Requiring repayment will cause extraordinary financial hardship by depriving the individual of the ability to provide for basic necessities that cannot be deferred such as food, shelter, clothing, utilities, and medical costs;

   E. The individual detrimentally changed their position in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a financial and/or contractual obligation that ~~he or she~~they would not have entered except for the receipt of the overpaid benefits;

   F. The individual relinquished a valuable right in reliance on the receipt of the overpaid benefits, including the receipt of other governmental benefits for which they would have been entitled except for the receipt of the overpaid benefits. Although the individual is not required to apply for governmental benefits and be rejected from receiving them, ~~he or she~~they may be required to prove eligibility for such benefits by establishing their economic situation at the time family and medical leave insurance benefits were received as well as the requirements for receiving said benefits;

   G. The individual's knowledge or lack of knowledge with regarding an employer's incorrect reporting of wages; and/or

   H. The individual's knowledge or lack of knowledge with regard to a provider who fails to meet the definition of health care provider, or who has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the individual's need for family and medical leave.

7. "Fees" means any additional charge by a private plan added to an outstanding amount owed.

8. "Party" or "Parties" means a claimant, employee, employer, or individual electing coverage involved in a proceeding.

9. "Qualifying Condition" means a reason for leave described at C.R.S. § 8-13.3-504(2).

6.3 Benefits Overpayments

1. A claimant who receives family and medical leave insurance benefits they are not entitled to receive shall be liable for repayment of the amount overpaid, unless otherwise relieved pursuant to section 6.~~2.~~3.7. Circumstances giving rise to a benefits overpayment include, but are not limited to a(n):

   A. Division miscalculation that occurs without any fault from the claimant or is caused by a claimant's omission, willful misrepresentation, or fraud;

   B. Determination by the Division that the claimant does not qualify for family and medical leave insurance benefits because they are not localized in Colorado pursuant to the in-state status provisions of 7 CCR 1107-1, are not a covered individual, do not have a qualifying condition, or are disqualified from receiving family and medical leave insurance benefits because of a willful false statement or misrepresentation pursuant to C.R.S. § 8-13.3-513;

   C. Claimant's failure to notify the Division of an event that causes benefit payments to change pursuant to 7 CCR 1107-3 Section 3.~~9~~10.1;

   D. Claimant who has not taken a leave of absence from the employment from which they are receiving family and medical leave insurance benefits;

   E. Claimant who is receiving family and medical leave insurance benefits, continuous or intermittent, during a period of unemployment, except as described in 7 CCR 1107-3 Section 3.4.1.A;

   F. Claimant receiving family and medical leave insurance benefits for an absence from work that is caused by circumstances that would entitle the claimant to temporary indemnity benefits under the Colorado Workers' Compensation Act in violation of 7 CCR 1107-4 Section 4.3;

   G. Claimant receiving family and medical leave insurance benefits ~~for an absence from work that is caused by circumstances that would entitle the claimant to benefits provided under~~ during any week the individual receives unemployment benefits for the same job pursuant to the Colorado Employment Security Act in violation of 7 CCR 1107-4 Section 4.4;

   H. Claimant receiving family and medical leave insurance benefits when their family and medical insurance leave benefits have been exhausted;

   I. Employer who incorrectly reports wages for the claimant, causing the claimant to receive family and medical leave insurance benefits in an amount greater than their actual wages would provide;

J. Self-employed individual who reports inflated wages on their own behalf, causing the claimant to receive family and medical leave insurance benefits in an amount greater than their actual wages would provide; or

K. Health care provider who fails to meet the definition of "health care provider" as defined by C.R.S. § 8-13.3-503(13), has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the individual's need for family and medical leave.

2. Benefit overpayments may be identified through any lawful means, including but not limited to Division audits, Division investigations, or external tips. ~~Benefit overpayment determinations are appealable pursuant to 7 CCR 1107-8 Section 8.8.~~

3. The Division will notify claimants of any determination of benefit overpayment by sending the claimant a determination letter to the claimant's correct address. If the claimant has provided an email address, the Division shall send the determination via email, and such delivery via email will satisfy the requirement to send the determination letter to the claimant's correct address.

4. The claimant may appeal a determination of benefit overpayment as detailed in 7 CCR ~~1108 Section 8.8~~1107-9.

5. Any outstanding benefit overpayment owed to the Fund by the claimant is subject to recovery pursuant to 7 CCR 1107-8 Section 8.~~9~~8.

6. Any outstanding balance past due shall accrue interest pursuant to 7 CCR 1107-8 Section 8.~~10~~9.

7. At its discretion, the Division may waive, in whole or in part, any amount of benefit overpayment owed to the Fund where such recovery would be against equity and good conscience, unless the overpayment resulted from the individual's false representation or willful failure to disclose a material fact to the Division.

6.4 Premium Underpayments, Fines, and Interest.

1. An employer or individual electing coverage shall be liable for a premium underpayment. Circumstances giving rise to a premium underpayment include, but are not limited to a(n):

A. Mistake in billing by the Division caused by a technical error;

B. Employer who has incorrectly identified employees localized in Colorado, underreported the number of employees they have, misclassified employees as non-employees, or failed to register with FAMLI and pay premiums; or

C. Individual electing coverage who has under reported their income or has failed to report their income.

2. A fine may be imposed for any violation, including a failure to undertake an action specifically required by the Act and its implementing rules, or by engaging in any activity specifically prohibited by the Act and its implementing rules.

3. Premium underpayments are identified through any lawful means including Division audits, investigations, and external tips.

4. The Division will notify an individual electing coverage or employer of any determination of premium underpayment or fine by sending a determination letter to the individual electing coverage or employer's correct address.

5. The party may appeal a determination of premium underpayment or fine pursuant to 7 CCR 1107-~~8 Section 8.8~~9.

6. Any outstanding premium underpayment fine or interest owed to the Fund by the party is subject to recovery pursuant to 7 CCR 1107-8 Section 8.~~8~~9.

7. Any outstanding balance past due shall accrue interest pursuant to 7 CCR 1107-8 Section 8.~~10~~9.

8. At its discretion, the Division may waive, in whole or in part, any fine or interest owed to the Fund where such recovery would be against equity and good conscience.

6.5 Private Plans and Benefit Overpayments

1. A claimant who receives benefits under a private plan that they are not entitled to receive shall be liable for repayment of the amount overpaid, unless otherwise relieved pursuant to this section. Circumstances giving rise to a benefits overpayment include, but are not limited to a(n):

   A. Private plan miscalculation that occurs without any fault from the claimant or is caused by a claimant's omission, willful misrepresentation, or fraud;

   B. Determination by the private plan that the claimant does not qualify for benefits because they are not localized in Colorado pursuant to the in-state status provisions of 7 CCR 1107-1, are not a covered individual, do not have a qualifying condition, or are disqualified from receiving benefits because of a willful false statement or misrepresentation pursuant to C.R.S. § 8-13.3-513;

   C. Claimant's failure to notify the private plan of an event that causes benefit payments to change pursuant to 7 CCR 1107-3 Section 3.~~9~~10.1;

   D. Claimant who has not taken a leave of absence from the employment from which they are receiving benefits;

   E. Claimant who is receiving benefits, continuous or intermittent, during a period of unemployment, except as provided by 7 CCR 1107-3 Section 3.4.1.A;

   F. Claimant receiving benefits for an absence from work that is caused by circumstances that would entitle the claimant to temporary indemnity benefits under the Colorado Workers' Compensation Act in violation of 7 CCR 1107-4 Section 4.3;

   G. Claimant receiving benefits ~~for an absence from work that is caused by circumstances that would entitle~~during any week the ~~claimant to~~individual receives unemployment

benefits ~~provided~~ under the Colorado Employment Security Act for the same job in violation of 7 CCR 1107-4 Section 4.4;

H. Claimant receiving family and medical leave insurance benefits when their family and medical insurance leave benefits have been exhausted;

I. Employer who incorrectly reports wages for the claimant, causing the claimant to receive benefits in an amount greater than their actual wages would provide; or

J. Health care provider who fails to meet the definition of "health care provider" as defined by C.R.S. § 8-13.3-503(13), has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the claimant's need for family and medical leave.

2. The private plan administrator shall notify the claimant of any determination of benefit overpayment by sending a determination letter to the claimant's correct address. If the claimant has provided an email address, the private plan administrator shall send the determination via email, and such delivery via email will satisfy the requirement to send the determination letter to the claimant's correct address. For determinations of benefit overpayments totaling $25 or more, the private plan administrator shall additionally notify the Division by sending copies of such determination letters to the Division's correct address in accordance with the private plan administrator's reporting schedule as described in 7 CCR 1107-5 Section 5.12.3.

3. The claimant may appeal a determination of benefit overpayment by a private plan as detailed in 7 CCR 1107-~~8 Section 8.89~~.

4. Any outstanding benefit overpayment owed to the private plan by the claimant is subject to recovery by any legal means available to the private plan.

5. A private plan shall exercise its discretion to waive, in whole or in part, any amount of benefit overpayment owed where recovery would be against equity and good conscience.

6. Any outstanding benefit overpayment owed to the private plan is subject to interest pursuant to C.R.S. § 5-12-101.

7. A private plan shall not subject an employee to any additional fees in addition to any outstanding benefit overpayment amounts owed.

~~Editor's Notes~~

~~History~~

~~New rule eff. 07/15/2023.~~

Notice of Proposed Rulemaking

Tracking number

2023-00617

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-7

Rule title

RULES CONCERNING EMPLOYEE JOB PROTECTION, ANTI-RETALIATION AND ANTI-INTERFERENCE

Rulemaking Hearing

Date

10/17/2023

Time

04:30 PM

Location

Online: Zoom:https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Edits to 7 CCR 1107-7 for further clarification and alignment to the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING EMPLOYEE JOB PROTECTION, ANTI-RETALIATION AND ANTI-INTERFERENCE

7 CCR 1107-7

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

7.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-509 and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 et seq. (the "FAMLI Act"), C.R.S.

2. The general purpose of these Employee Job Protection and Anti-Retaliation and Anti-Interference rules is to exercise the authority of this Division to enforce and implement Colorado legislative enactments and accompanying rules protecting against retaliation for, or interference with, the exercise of protected rights, and requiring that employees receive various forms of notification of their rights under the Paid Family and Medical Leave Insurance Act (C.R.S. Title 8, Article 13.3, Part 5). These Rules are adopted pursuant to Division authority in C.R.S. § 8-13.3-509(7).

3. Incorporations by Reference. Articles 13.3 and 13.5 of C.R.S. Title 8 (2023), Articles 1 and 3 of C.R.S. Title 18 (2023), Article 6 of C.R.S. Title 26 (2023), Article 34 of C.R.S. Title 24 (2023), 29 C.F.R. 825, et seq. (2023), 29 U.S.C. 2601, et seq.(~~1993~~2023), 42 U.S.C. § 12101 et seq.(2023), 41 U.S.C. § 21F (2023), and 38 U.S.C. § 4301, et seq (2023) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

7.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act. Terms defined under the federal Family Medical Leave Act of 1993 ("FMLA," 29 U.S.C. 2601, et seq. (1993)), or its implementing regulations (28 CFR § 825) shall be treated as persuasive, supplementary authority when those definitions are not facially inconsistent with the FAMLI Act or its implementing regulations.

2. "Complaint" has the same meaning as 7 CCR 1107-8, Section 8.2.5~~4~~.

3. "Eligible employee" means an employee entitled to the protections described at C.R.S. § 8-13.3-509(1).

~~4~~4. "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take paid family and medical leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

5. "Protected activity" means any activity described under C.R.S. § 8-13.3-509(4).

~~5~~6. "Retaliation" means, and is synonymous with, discrimination based on or for protected activity, and it encompasses any act (whether an affirmative act, an omission, or a statement) that is intended to, and could, deter a reasonable person from engaging in, or impose consequences for, protected activity. Examples of unlawful retaliation may include, but are not limited to:

A. Subjecting an employee to intimidation, threat, reprisal, harassment, or discrimination;

B. Subjecting an employee to an adverse employment action, including discipline, discharge, suspension, transfer, or assignment to a lesser position in terms of job classification, job security, or another term or condition of employment;

C. Reducing the pay or hours of work of an employee or denying an employee additional hours of work;

D. Failing to hire an individual because they engaged in protected activity;

E. Failing to reinstate an employee following a return from leave, in accordance with Section 7.3 of these rules;

F. Failing to store and maintain the confidentiality of employee information related to requests for leave under the FAMLI Act or its implementing regulations, in accordance with all applicable federal, state, and local laws and regulations, and as provided by 7 CCR 1107-5, Section 5.3.8.

~~G~~G. Initiating an eviction proceeding or evicting an employee from employer-paid housing because they engaged in protected activity.

H. Engaging in conduct which would reasonably have the effect of discouraging a reasonable employee from accessing family and medical leave insurance benefits;

~~H~~I. Enacting or enforcing an employer attendance policy that counts leave taken under the FAMLI Act as an absence that may lead to or result in discipline, demotion, or suspension. Such an attendance policy shall constitute per se retaliation under C.R.S. § 8-13.3-509. An employee working under this policy is entitled to appropriate legal and equitable relief under the FAMLI Act.

~~I~~J. Taking any effort to use a person's immigration status to negatively impact the rights, responsibilities, or proceedings of any person or entity under the FAMLI Act. Such efforts shall constitute per se retaliation and/or extortion, based on statutory provisions including but not limited to the following that make it unlawful: for any person to "threaten[] to report to law enforcement officials the immigration status of the threatened person or another person" to "induce another person" to give up money "or another item of value" (C.R.S. § 18-3-207(1.5)), including inducing the surrender of any "tangible and intangible personal property, contract rights, choices in action, [or] services, and any rights of use or enjoyment connected therewith" (C.R.S. § 18-1-901).

~~6~~7. "Interference" means any act or omission that, regardless of intent, interferes with any right or protected activity under the FAMLI Act or its implementing regulations. Interference includes but is not limited to:

A. Intimidating or threatening conduct intended to discourage an employee from accessing family and medical leave insurance benefits or family and medical leave, or which has the effect of discouraging an employee from accessing such benefits or leave;

B. Providing false or misleading information intended to interfere with an employee's ability to access family and medical leave insurance benefits or paid family and medical leave, or which has the effect of interfering with an employee's ability to access such benefits or leave;

C. Failing to provide notice, as required by C.R.S. § 8-13.3-511;

~~D~~D. Failing to reinstate an eligible employee to their position upon returning from leave as required under C.R.S. § 8-13.3-509(1) and Section 7.3;

E. Information requests prohibited by 7 CCR 1107-3, Section 3.~~7.6~~8.9 **or 7 CCR 1107-5, Section 5.3.8**;**.**

~~E~~F**. Requiring the production of information defined as confidential under these rules or other statutes including but not limited to the Healthy Family and Workplaces Act of 2020 ("HFWA," C.R.S. Title 8, Article 13.3, Part 4), the Family and Medical Leave Act of 1993 ("FMLA," 29 U.S.C. §§ 2601–2654 (2006)), the Americans With Disabilities Act of 1990 ("ADA," 42 U.S.C. § 12101 et seq. (1990)), and the Genetic Information Nondiscrimination Act of 2008 ("GINA,"41 U.S.C. § 21F (2008~~))~~.);.**

~~F~~G**. Failing to cooperate with the Division in processing a request for family and medical leave insurance benefits;**

~~G~~H. Failing to cooperate with the Division during the processing of a complaint arising under C.R.S. § 8.13.3-509;

~~H~~I. Inducing or attempting to induce an individual to prospectively waive a right under the FAMLI Act or its implementing regulations; or

~~I~~J. Taking any effort to use a person's immigration status to negatively impact the rights, responsibilities, or proceedings of any person or entity under the FAMLI Act. Such efforts constitute per se interference and/or extortion.

7.3 Clarifications Regarding Job Reinstatement

1. Pursuant to C.R.S. § 8-13.3-509(1), Any covered individual who has been employed with the covered individual's current employer for at least 180 days prior to the commencement of the covered individual's family and medical leave who exercises the covered individual's right to family and medical leave insurance benefits shall be entitled, upon return from that leave, to be restored by the employer to the position held by the covered individual when the leave commenced, or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

   A. An individual is considered employed on any day they work, on their days off, and during any leave, paid or unpaid, where the employer reasonably believes the individual will return to work. Where employment is seasonal, an individual is not considered employed between seasons.

   B. The 180 days need not be consecutive. However, if a gap in employment exceeds 365 days, then the number of days employed resets to zero.

   C. A change in the employee's status with their current employer does not reset or negate the number of days the employee was employed prior to the change in status (e.g., full-time to part-time, seasonal to full-time).

   D. Leave taken under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA," 38 U.S.C. §§ 4301-4334 (1994)) is considered "employment."

   E. The replacement of an employer by a "successor employer," as defined by C.R.S. § 8-13.3-503(8)(b)(II), does not interrupt an employee's accumulation of days employed.

2. An employer is not obligated to reinstate an employee:

   A. Where the covered individual has not been employed with the current employer for at least 180 days prior to the commencement of the covered individual's family and medical leave;

   B. Where the covered individual's family and medical leave extends beyond the maximum benefit duration provided by C.R.S. § 8-13.3-505;

C. Where the employee's return from family and medical leave coincides with an employer's scheduled cessation of operations for the season (e.g., ski resorts, waterparks) and the employer can show that the employee would not otherwise have been employed at the time of reinstatement;

D. Where the employee's written contract for employment with the employer has ended pursuant to its terms;~~,~~

E. Where an employee's position is eliminated due to legitimate downsizing or reorganization;

F. Where the employee cannot perform the essential functions of their job any longer following the period of leave. An employee may be eligible to request reasonable accommodation under the Americans with Disabilities Act ("ADA"), C.R.S. § 24-34-402.3, or other applicable state or federal law; ~~or~~

G. Where the Division or a private plan administrator has made a determination that the employee applied for or was approved for family and medical leave insurance benefits based on a fraudulent certification;~~,~~

~~3. Employers shall restore eligible employees to their original job, or to an equivalent position, with equivalent pay, benefits, and other terms and conditions of employment upon the employee's return from approved family and medical leave. For purposes of this section, an "equivalent position" means a similar, but not necessarily identical, position, and must involve the same or substantially similar duties, responsibilities, skill, effort, and authority.~~

~~A~~H. Where the employee fails to provide notice pursuant to C.R.S. § 8-13.3-505(5) and CCR 7 CCR 1107-3, Section 3.8, unless the need for leave was not foreseeable and unusual circumstances justify the failure to comply; or

I. Where an employee on family and medical leave provides written notice of resignation.

3. An employer that chooses to deny reinstatement under this subsection to an employee on family and medical leave must notify the employee in writing as soon as the employer decides to deny reinstatement. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

A. A statement that the employer intends to deny employment reinstatement when the leave has ended;

B. The reasons behind the decision to deny reinstatement;

C. An explanation that health benefits will still be paid for the duration of the leave; and

D. The date in which eligibility for employer-provided health benefits ends.

4. **Under this Rule, ~~"~~an "equivalent position ~~with equivalent employment benefits, pay and other terms and conditions of employment," "~~ includes, but is not limited to:**

~~1~~A. **Base pay - Providing an employee with equivalent base pay upon returning from family and medical leave. Base pay includes bonuses as described by 29 CFR Section 825.215(c)(2). Base pay does not include overtime or tips unless such overtime was regular or consistent. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from family and medical leave.**

~~2~~B. **Benefits - Providing an employee with equivalent benefits upon returning from family and medical leave. Benefits include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan.**

~~3~~C. **Proximate location - Permitting an employee to return to an equivalent location as worked prior to taking family and medical leave. If it is not possible to return the employee to the exact location, an employer may offer to return the employee to a proximate location or site where work is performed for and/or in connection with the employer's business. If the employer offers a position at a location different from the employee's original worksite, the employee must be reinstated to a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance).**

~~4~~D. **Approximate shift times - Providing an employee with a schedule that is equivalent to the employee's schedule prior to taking family and medical leave. Material changes to an employee's schedule upon return from leave may raise an adverse inference of retaliation (e.g., scheduling a historically day shift working employee to graveyard shifts, etc.). In returning a covered employee to their equivalent position, employers may be required to remove an employee temporarily working the covered employee's shift in order to comply with this section.**

~~5~~E. **Approximate hours per week - An employee returning to work from family and medical leave shall be permitted to work the equivalent number of hours per week as was worked prior to the employee taking leave. Material changes to an employee's working hours that change the employment status of an employee may raise an adverse inference of retaliation (e.g., reducing an employee's hours from 40 hours per week to 25 hours per week, changing the employee's status from full-time to part-time).**

~~B.~~F. **Nothing in these Rules shall be construed to require an employer to extend or offer permanent or indefinite employment to a temporary or seasonal employee.**

~~C~~G. **Employers shall not be prohibited from disciplining or terminating employees who have attendance issues unrelated to protected leave under the FAMLI Act (e.g., excessive tardiness), or employees who have violated company policies that comply with applicable local, state, and federal laws.**

~~D~~H. **Nothing in these Rules requires an employer to ignore an employee's performance or retain an underperforming employee.**

~~E~~I. **No employer shall be required to postpone or avoid legitimate layoffs or downsizing of a business solely to restore an eligible employee to their prior position upon returning from approved leave under the FAMLI Act.**

~~F~~J. **An employee who is approved for and takes leave on an intermittent or reduced leave schedule and who fails to work during hours scheduled in accordance with that leave may be subject to employer discipline. In theevent that an employee's utilization of intermittent leave or reduced leave schedule is inconsistent with the Division's or private plan administrator's approval, it shall not be considered retaliation under C.R.S. § 8-13.3-509(3) for an employer to request additional information related to the use of leave.**

~~G~~K. **An employee's reinstatement to a position slated for elimination due to legitimate downsizing or reorganization would not meet the requirements of an equivalent position when the employee's original position is not slated for elimination due to downsizing or reorganization.**

5. An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within Sections 7.3.2 or 7.3.3.

6. Leave and employment protection provided by C.R.S. § 8-13.3-509(1) is limited to the benefit duration provided by C.R.S. § 8-13.3-505. An employer may not treat an absence that is subject to appeal or judicial review as an absence not protected by the FAMLI Act unless and until the leave is denied and the claimant exhausts any right to appeal or judicial review. However, if the outcome of an appeal or judicial review is pending outside of the benefits duration provided by C.R.S. § 8-13.3-505, it does not extend the duration of the leave available to the employee beyond the period approved by the Division or a private plan administrator

7.4 Employment Agencies

1. When an employee is employed by an employment agency and the employment agency's client ("client employer"), both employers are responsible for compliance with the FAMLI Act.

2. Employees who are employed by both an employment agency and a client employer must be counted by both employers to determine employer status, and premium liability under the FAMLI Act and its implementing regulations, regardless of whether the employee is maintained on one or both of the employers' payrolls. However, only one of these parties need pay premiums pursuant to the agreement between the employment agency and the client employer.

3. Under these Rules, employment agencies are responsible for the following:

A. Providing the required notice under C.R.S. § 8-13.3-511 to its employees;

B. Maintaining any health care benefits during the family and medical leave benefit period as described by section C.R.S. § 8-13.3-509(2)~~Section 7.3.3.~~**; and**

C. Restoring an eligible employee to an equivalent position upon return from family and medical leave.

4. Employment agencies are responsible for maintaining all records required by the FAMLI Act with respect to their employees.

5. Employment agencies shall meet all of their obligations under the FAMLI Act even when their client employer is not in compliance with the law or does not provide support to the employment agency in meeting these responsibilities.

6. Client employers must keep basic payroll and personnel records with respect to any such employees.

7. Client employers are subject to the prohibitions on retaliation and interference described by C.R.S. § 8-13.3-509(4).

7.5 Fines

In addition to any remedies available under C.R.S. § 8-13.3-509(6), the Division will assess a fine of $500 per covered individual, per each violation under C.R.S. § 8-13.3-509.

~~Editor's Notes~~

~~History~~

~~New rule eff. 07/15/2023.~~

7.6. Language Accessibility

The Division will make all forms and communications under this rule available in English and Spanish. If an individual's primary language is neither English nor Spanish, the Division will make a reasonable attempt to accommodate that individual's language needs, subject to the Division's sole discretion based on available resources.

Notice of Proposed Rulemaking

Tracking number

2023-00619

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-8

Rule title

RULES CONCERNING INVESTIGATIONS, DETERMINATIONS, AND APPEALS

Rulemaking Hearing

Date

10/17/2023

Time

04:30 PM

Location

Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Edits to 7 CCR 1107-8 for further clarification and alignment to the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING INVESTIGATIONS~~, DETERMINATIONS, AND APPEALS~~

7 CCR 1107-8

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

8.1 Statement of Authority, Purpose and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to investigating, making determinations, and hearing appeals for violations of the Act and its implementing regulations.

3. Article 13.3, Title 8 (2023), Article 12, Title 5 (2023), and Article 4, Title 24 (2023), C.R.S., and 29 C.F.R. § 1602.14 (2023) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

8.2 Definitions and Clarifications

1. "Aggrieved party" means ~~an individual or entity~~ a person who alleges that their rights under the FAMLI Act or its implementing regulations have been violated. ~~An~~For the purposes of 7 CCR 1107-8, an aggrieved party may either be an employee ~~who engaged in protected activity,~~ or an other protected party who alleges a violation arising from C.R.S. § 8-13.3-509.

2. "Authorized representative" means a person designated by a party to an agency action or investigation to represent the party during ~~the Division's investigative process.~~ any Division proceeding, including an investigation, hearing, or appeal. An authorized representative may be, but does not have to be, an attorney. To designate or change an authorized representative, the party must comply with the requirements of Section 8.3.8.~~9.~~

~~3~~3. "Certified copy" means a copy of a final division decision (issued by a Division investigator or hearing officer) signed by the director of the division, or his or her designee, certifying that the document is a true and accurate copy of the final decision. A certified copy must be requested in writing. A division decision (issued by a Division investigator or hearing officer) will not be certified unless: either (1) all appeal deadlines have passed and no appeal has been filed or (2) if an appeal was timely filed, the decision was not superseded on appeal.

4. "Complainant" means an aggrieved party who files a complaint alleging violations ~~-~~under the FAMLI Act or its implementing regulations with the Division.

~~4~~5. "Complaint" means the official form submitted to the FAMLI Division by an aggrieved party alleging a violation of the ~~the~~ FAMLI Act or its implementing regulations.

~~5~~6. "Correct address" can include, but is not limited to, an email address reported to the Division or posted on a party's website, an address on file with the Colorado Secretary of State, the address of a registered agent on file with the Colorado Secretary of State, or an address provided to the Division by the party. A notice is deemed sent to a party when placed in the U.S. mail, sent by electronic means, personally delivered to a party or a party's representative, or personally delivered to a party's correct address.

~~6~~7. "Covered individual" has the same meaning as set forth in C.R.S. § 8-13.3-503(3).

~~7. "Determination letter" means a letter detailing a decision by a Division compliance investigator upon the conclusion of an investigation.~~

~~8~~8. "Determination" has the same meaning as defined in 7 CCR 1107-9, Section 9.2.8.

9. "Good cause" has the same meaning as 7 CCR 1107-3, Section 3.2.~~12~~11.

~~9.~~ 10. "Investigative process" ~~means~~means the processes and procedures used by the Division to commence and conclude an investigation, including but not limited to the receipt and recording of complaints and responses, conducting witness interviews, performing document analysis, and drafting and delivering determinations and notices of dismissal.The investigative process does not include the Division's appeals process or the judicial review process of a Division determination.

~~10~~11. "Investigator" means a member of the Division staff tasked with the collection and discovery of factual information concerning the claim(s) in the complaint under investigation in addition to the preparation of a determination or dismissal arising out of an investigation.

12. "Notice of Dismissal" under this Section means a written notification provided to a Complainant and Respondent by the Division dismissing the complaint in its entirety. A complaint can be dismissed with or without prejudice. A complaint that is dismissed with prejudice is considered a

final determination of the Division. A Notice of Dismissal may be issued at any time during the proceedings~~, for any reason.~~.

~~11~~13. "Other protected party," as to the rights and responsibilities under the FAMLI Act, means a person who has, or is perceived as having, any of the following relationships protected against retaliation under the FAMLI Act, including but not limited to:

A. a "family member" of an employee, as defined at C.R.S. § 8-13.3-503(11).

B. a "workplace relationship" with a covered employee which encompasses any person with whom the employee has interacted repeatedly in the scope of their employment, regardless of the person's employer or employment status.

~~12.~~14. "Party" has the same meaning as 7 CCR 1107-19.2.12.

15. "Respondent" means an individual or entity against whom a complaint has been filed.

~~13. Nothing in this rule governs appeals at 7 CCR 1107-3, Section 3.10 or 7 CCR 1107-5, Section 5.19.~~

8.3 Filing a Complaint

1. ~~An aggrieved party A~~ny person who alleges that their rights under the FAMLI Act or its implementing regulations have been violated may ~~wishes to~~ file a complaint with the Division by using~~shall use~~ the Division approved form(s). The Complainant shall~~), and shall~~ comply with any other Division instructions as to information or submissions required by the Division.

2. If the Division receives written communication from ~~an individual~~a person alleging a violation of the FAMLI Act or its implementing regulations, and the contents of the communication suggest that the ~~individual~~person would like the Division to initiate an investigation, the Division will send the ~~individual~~person a complaint form and invite them to complete and return the complaint form. If the ~~individual~~person returns a completed complaint form within thirty-five (35) days after the Division sends it, the complaint will be deemed to have been received on the date of the initial written communication. ~~-~~If the ~~individual~~person returns a completed complaint form later than thirty-five (35) days after the Division sends it, the complaint will be deemed to have been received on the date the Division receives the completed complaint form.

~~2. A complaint filed with the Division may be filed by an aggrieved party or an authorized representative.~~

3. A complaint shall include the ~~complainant's~~Complainant's signature and contact information, ~~employer's~~Respondent's contact information, and basis for the complaint. Failure to comply with this Rule may result in dismissal of the complaint~~;~~ without prejudice. Anonymous complaints will be accepted; however, the Division may choose to independently address anonymous complaints at its discretion.

4. The failure of a complainant to respond in a timely manner to informational or investigatory requests by the Division may result in dismissal of the complaint~~.~~ without prejudice. If the Division issues a Notice of Dismissal for failure to comply with this Rule, and the Complainant provides the

information within thirty-five (35) days of receipt of the notice, the Division may at its discretion reopen the complaint. A claimant may be required to file a new complaint if the Division receives their response more than thirty-five (35) days after the Division's request for information. Nothing in this subsection shall be construed to extend the deadlines described at C.R.S. § 8-13.3-509(6)(c)-(d).

~~5. Investigations are conducted at the Division's discretion.~~

~~6. An aggrieved party~~

5. A Complainant under this section may pursue relief for any violation arising under C.R.S. § 8-13.3-509 through either the court system or the Division's established procedures and processes.

~~7~~6. Aggrieved parties under C.R.S. § 8-13.3-509 are not required to first pursue the Division's administrative remedies prior to initiating a lawsuit in the court system.

~~8~~7. The Division does not have jurisdiction over any violation arising under this section that has been adjudicated or is currently being adjudicated by the court system or by another government administrative body. If the Complainant files a civil action in a court of competent jurisdiction against an employer or any other individual or entity named as a Respondent to a pending complaint before the Division, the Division will dismiss the complaint pending before the Division with prejudice.

~~9.~~8 Any party to a complaint may designate an authorized representative to represent the party during the Division's investigative, enforcement, and/or appeals process.

A. The party may designate an authorized representative by filing the Division-approved form with the Division.

B. The party may revoke the authorized representative's authority by contacting the Division in writing.

~~10~~9. In any Division investigation, proceeding, or other action initiated for a reason other than the receipt of a named complaint, if information is provided to the Division by a source requesting confidentiality, and that information is used only as a basis for procuring other evidence, not offered as evidence itself, then the source shall remain confidential. Any such confidential source is unlawful to disclose (unless the source consents) in any administrative or judicial proceeding, in response to any records or information request, or in any other manner.

10. Within ninety (90) days of a complaint being filed (or within ninety (90) days of the effective date of these Rules, whichever is later), the Division will assess whether it will exercise its discretion to either investigate or dismiss the complaint. The Division will inform the parties of its decision in writing.

8.4 Filing, Notification, and Deadlines

1. A complaint or appeal to the Division is considered "filed" with the Division when the complaint or appeal is received via mail or online submission. ~~Any complaint~~Complaints shall be filed within the time limits specified by the Act and its implementing regulations. The last date upon which a

timely charge may be filed falls upon a Saturday, Sunday, or State of Colorado legal holiday, the complaint shall be deemed timely if filed with the Division on the next regular business day. Any complaint, grievance, or appeal to the Division received after 11:59 p.m. Mountain Standard Time is considered filed the next business day.

2. AnyA complaint or appeal to the Division is considered "signed," or to have a "signature," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, a mark, or a typed name entered by the party or authorized representativeComplainant in the signature area. By signing in any such fashion, the individual is persons deemed to have agreed and assented that the document is signed by them.

3. Deadlines in these Rules may be extended a maximum of ninety [90] days for good cause.

4. Within sixty (60) days of a complaint being filed (or within sixty (60) days of the effective date of these Rules, whichever is later), the Division will assess whether it will exercise its discretion to investigate the complaint or dismiss the complaint. The Division will inform the parties of its decision in writing.

8.5 Investigations

1. The Division has the authority and discretion to initiate investigations, audits, or any other compliance oversight activities upon its own initiative or upon the receipt of a complaint filed by an aggrieved party or their authorized representative.

2. The Division may utilize the following as part of the investigatory process:

   A. Interviews of parties or witnesses;

   B. Information gathering, fact-finding, and reviews of written submissions; and

   C. Any other lawful techniques that enable the Division to assess compliance with the FAMLI Act and its implementing regulations.

3. The investigation shall include a thorough review of the circumstances under which the alleged violations occurred and any policies and/or practices that may appear to constitute retaliatory personnel action, even though they have not been expressly cited by the Complainant.

4. Whenever a complaint or investigation arising under the Act or its implementing regulations is filed or commenced, the Respondent shall comply with the federal "Preservation of Records Made or Kept" rule, 29 C.F.R. § 1602.14, requiring that the Respondent "shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action." For purposes of complaints arising under C.R.S. § 8-13.3-509, relevant "personnel records" include but are not limited to:

   A. Records related to paid family and medical leave insurance benefits;

   B. Records related to other benefits that relate to, impact, or are impacted by paid family and medical leave insurance benefits;

C. Requests or statements by the ~~individual~~person that are claimed to be protected activity;

D. Responses to, or analyses of, such request(s) or statement(s); and

E. Policies or decisions, formal or informal, that may apply to such request(s) or statements(s).

~~4.~~5. Complaints shall be assigned to a Division investigator.

~~5~~6. At the commencement of an investigation into a complaint, the Division will send a Notice of Complaint to the Respondent at the Respondent's correct address. A Respondent must respond within thirty (30) days after a complaint is sent to them, unless an extension is granted for good cause. An incomplete response may be considered a failure to respond.

A. If the Notice of Complaint cannot be delivered, the Division's investigative process cannot be commenced. If a correct address is located or provided, the Division will resend the Notice of Complaint, and the Respondent's deadline to respond will be calculated from the date of the subsequent notice.

B. If the Division cannot determine the Respondent's correct address, it may contact the Complainant to request the Respondent's correct address. The Division may dismiss the complaint without prejudice if neither the Complainant nor the Division can determine the Respondent's correct address.

C. All parties to a complaint are responsible for ensuring the Division has current contact information.

1. All parties must promptly notify the Division of any change in contact information, including mailing address, email address, and phone number.

2. Parties should not rely on the U.S. Postal Service to forward mail. Failure to respond to a notice because mail was not forwarded to a new address will not be excused.

~~5~~76. Upon receipt of the Respondent's response, the Division shall review all of the documentation received.

6. ~~Upon conclusion of the investigation, the Division may issue a determination, or a Notice of Dismissal.~~

~~7.~~87. Subject to the approval of the Division, complaints may be amended under certain circumstances. Amendments to the complaints may include but are not limited to: amendments to cure technical defects and errors or omissions, including failure to sign a complaint; to clarify or amplify the allegations therein; or to allege additional violations arising from the subject matter of the original complaint. Amendments related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first filed.

98. Amendments shall be filed in the same manner as provided by these Rules for the filing of the original complaint.

910. The Division may exercise its discretion to consolidate complaints, or to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.

8110. An aggrieved party under C.R.S. § 8-13.3-509 may withdraw the complaint, or their participation in the complaint filed on their behalf, at any time prior to the issuance of a determination by notifying the Division in writing.

8.6 Determinations

1. 121. Upon conclusion of an investigation, the Division will issue and deliver to the parties a written determination with appeal rights or a notice of dismissal. A complainant may not withdraw a complaint once a2. The date of issuance of the Division's determination has been issued by the Division. is the date the Division's determination is sent. The appeal deadlines are calculated from the Division's date of issuance.

3.132. The Division shall sendkeep a full and complete record of all proceedings in connection with the investigation.

8.6 Burdens of Proof

1. The party seeking an award of benefits or damages, the imposition of a fine, penalty, fee or interest, or any other relief, has the burden of proof to show the determination letter to relief should be granted by a preponderance of the party's correct address onevidence. Where the Division proves the grounds for imposing fines, penalties, or fees, the amount of such fines, penalties, or fees shall be overturned or modified only if the employer or private plan proves that the Division abused its discretion. date the determination is issued.

4. Determinations by the Division may include the following remedies, depending on which, if any, the Division's findings support:

A. Monetary or other relief authorized by the FAMLI Act or its implementing regulations, including any remedies under C.R.S. § 8-13.3-509(6)(b)-(7); and/or

B. An assessment of an amount owed (benefit overpayment, premium underpayment, fines, interest);

5. For any award under these rules, the Division will issue a certified copy of the final Division decision imposing relief or remedies, signed by the Director of the Division, or their designee, certifying that the document is a true and accurate copy of the final decision. The individual awarded relief or remedies may file the certified copy with the clerk of court having jurisdiction over the parties at any time after the entry of the determination. Such a filing can be in a county or district court and will thereby have the effect of a judgment from which execution may issue.

6. When a determination letter is issued in regards to a benefit overpayment or premium underpayment, within forty-five (45) calendar days of the date the determination letter was issued, the Respondent must take action either by:

A. Complying with the order made by the Division by:

1. Paying any outstanding balance owed to the Fund;

2. Requesting a payment plan for any outstanding balance owed to the Fund; or

3. Requesting to have the outstanding balance taken out of future FAMLI benefit payments; or

B. Filing an appeal.

7. Any determination made by the Division that is subject to appeal under this section shall be deemed final, and any information contained in any document or notice issued by the Division that is subject to appeal under this section shall be deemed correct unless the Respondent files a timely request for appeal in accordance with this regulation or establishes to the satisfaction of the Division that said Respondent had good cause for the failure to do so pursuant to Section 8.8.4. of this rule.

8.7 Burdens of Proof

1. 2. Complaints alleging ~~retaliation~~retaliatory personnel action under C.R.S. § 8-13.3-509 are analyzed as follows, with the preponderance of the evidence standard applying to all burdens of proof.

A. The Complainant has the burden of proving all elements of a claim, including that an unlawful ~~retaliation~~retaliatory personnel action occurred. The Respondent must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. If an employer takes an adverse employment action, as described in 7 CCR 1107-7 Section 7.2.5.B, against an employee who engaged in protected activity or an other protected party within ninety (90) days of the employee engaging in protected activity, such adverse employment action creates a rebuttable presumption of retaliation.

B. If the Complainant proves unlawful retaliation or discrimination was a motivating factor for the complained-of practice, then a violation is proven. However, if a violation is proven but the Respondent proves that the complained-of practice would have occurred for another lawful reason, then the Division shall not award any damages~~.~~ as of the date the practice would have occurred.

2.3. Complaints alleging interference under C.R.S. § 8-13.3-509 are analyzed as follows, with the preponderance of the evidence standard applying to all burdens of proof.

A. The Complainant has the burden of proving all elements of a claim, including that unlawful interference occurred. The Respondent must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. Interference is established when a Complainant shows the Respondent engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by the FAMLI Act.

B. If the Complainant meets its burden of proof, then a violation is proven. However, if a violation is proven but the Respondent demonstrates the violation resulted from

circumstances beyond its control and that no alternative course of action was available, then the Division shall not award any damages.

~~8.8 Appeals for Complainant~~ 4. **Determinations** must include a finding of fact on which the

~~1. Any party to a~~ determination ~~may appeal the Division's determination. Parties may not appeal the Division's dismissals without prejudice or discretionary decisions as to whether or not to investigate a complaint.~~

~~2. Parties are encouraged, though not required, to use the Division's appeal form. A valid appeal~~ is ~~a written statement that is timely filed with the Division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the party or the party's authorized representative.~~

~~3. The Division will only consider appeals submitted within forty-five (45) days of the date the Division issued its determination letter.~~

~~4. The Division may consider an appeal received as late as sixty (60) days after the date the Division issued its determination letter if the party submits the appeal with evidence establishing good cause for the late appeal.~~

~~5. If no appeal is filed within the timeline listed above in 7 CCR 1107-8, Sections 8.8.3 and 8.8.4, the determination shall be conclusive and final.~~

~~6. An appeal may, in the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more decisions and/or phases of the appeal.~~

~~7. A party that timely files a valid appeal of the Division's determination will be afforded an administrative appeal hearing before a Division hearing officer. Parties may appear in person or remotely.~~

~~8. Upon receipt of the appeal, the Division will notify the parties of the date of the hearing and any interim deadlines via U.S. postal mail, electronic means, or personal delivery.~~

~~9. If the party that filed the appeal does not participate in the hearing, the appeal may be dismissed.~~

~~10. The hearing officer shall have the power and authority to call, preside at, and conduct hearings. The hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of documents deemed necessary as evidence in connection with the disputed redetermination.~~

~~11. Parties participating in a hearing before the Division may submit new testimonial evidence to the hearing officer in accordance with deadlines imposed by the Division. The parties may submit new documentary or other non-testimonial evidence in accordance with deadlines imposed by the Division and upon showing "good cause," which may be assessed~~ based ~~on any~~, the relevant section or sections of the law, and the date the determination was issued.~~factors, including but not limited to:~~

~~A. That the new evidence was previously not known or obtainable, despite diligent evidence-gathering efforts by the party offering the new evidence;~~

~~B. That the party failed to receive fair notice of the~~

8.7 Remedies

1. Upon conclusion of an investigation ~~or of a key filing by another party or by the~~ , the Division will issue and deliver to ~~which~~ the ~~new evidence is responsive;~~

~~C. That factors outside the control of the party prevented~~parties a ~~timely action or interfered with the opportunity to act, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule;~~

~~D. That a~~written determination ~~with raised a new issue or argument that cannot be responded to adequately without the new evidence;~~

~~E. That, at the investigation stage, the party offering new evidence requested more time to submit evidence, yet was denied, and in the hearing officer's judgment (a) the need for more time was legitimate and did not reflect neglect by the party, (b) the denial of the request for more time was unwarranted, and (c) exclusion of the evidence would cause substantial injustice to the party; and/or~~

~~F. That failure to admit the evidence otherwise would cause substantial injustice and did not arise from neglect by the party.~~

~~12. New evidence must be sent to all other parties to the~~ appeal~~. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record.~~ rights or a notice of dismissal.

~~13. The Division shall keep a full and complete record of all proceedings in connection with the investigation. All testimony at a hearing must be recorded by the Division but need not be transcribed unless the hearing officer's decision is appealed.~~

~~14. The hearing officer may, upon application of any party or on their own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.~~

~~15. The hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The hearing officer will decide whether the Division's redetermination is based on a clear error of fact or law.~~

~~16. The hearing officer shall not engage in ex parte communication with any party to an appeal.~~

~~17. The hearing officer's decision constitutes a final agency action pursuant to~~

2. Determinations issued by the Division may include the following remedies, depending on which, if any, the Division's findings support:

A. Monetary or other relief authorized by the FAMLI Act or its implementing regulations, including any remedies under C.R.S. § 8-13.3-509(6)(b)-(7);

B. An assessment of an amount owed (fines and interest); and/or

C. Orders to cease non-compliance, effectuate compliance, and/or otherwise redress direct or indirect consequences of violations of the FAMLI Act.

3. For any monetary award imposed under these rules, the Division shall issue a determination and Notice of Assessment and Requirement to Report Payments Made which will include:

A. Total damages owed to the Claimant;

B. Total fines owed to the ~~24-4-106. The~~ Division;

C. Instructions for remittance of payment to the Complainant(s) and/or Division;

D. Instructions for the reporting of payments to the Complainant(s); and

E. Deadlines to remit payment to the Complainant(s) and/or Division.

4. The person awarded relief or remedies under this section may request a certified ~~shall promptly send a~~ copy of the final Division decision imposing relief or remedies, signed by the Director of the Division, or their designee, certifying that the document is a true and accurate copy of the final decision. The person awarded relief or remedies may file the certified copy with the clerk of court having jurisdiction over the parties at any time after the entry of the determination. Such a filing can be in a county or district court and will thereby have the effect of a judgment from which execution may be issued.~~hearing officer's decision to each party's correct address.~~

~~18. Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five (35) days after the date the decision of the agency was sent to the party's correct address. The hearing officer's decision constitutes final agency action pursuant to C.R.S. § 24-4-106. Judicial review is limited to appeal briefs and the record designated on appeal.~~

5. An aggrieved party is not entitled to appeal a determination of the Division to a court of competent jurisdiction until the aggrieved party has exhausted all administrative remedies, including appeal to a Division hearing officer.

8.~~9~~8 Recovery

1. Any outstanding amount owed to the Division as determined by a final agency action may be collected by the Division through any and all legal means available, including, but not limited to benefit offsets, garnishments, liens, or the Federal Treasury Offset Program.

2. The Division may share information with other criminal or civil enforcement authorities if it believes that a violation implicating their enforcement authority has occurred. However, the Division will not voluntarily provide any person or entity information concerning immigration status.

8.~~10~~9 Interest

Any outstanding balance past due shall accrue interest at the rate allowed pursuant to C.R.S. § 5-12-101, until payment is received in full.

~~**8.11 Language Accessibility**~~

~~The Division will make all forms and communications under this rule available in English and Spanish. If an individual's primary language is neither English nor Spanish, the Division will make a reasonable attempt to accommodate that individual's language needs, subject to the Division's sole discretion based on available resources.~~

~~Editor's Notes~~

~~History~~

~~New rule eff. 07/15/2023.~~

Notice of Proposed Rulemaking

Tracking number

2023-00620

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-9

Rule title

Regulations Concerning Appeals

Rulemaking Hearing

Date

10/17/2023

Time

04:30 PM

Location

Online: Zoom:https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn

Subjects and issues involved

Clarification on the appeals process described in the Colorado Paid Family and Medical Leave Insurance Act C.R.S. 8-13.3-501 et seq. C.R.S. 8-13.3-516.

Statutory authority

C.R.S. 8-13.3-516

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING APPEALS

7 CCR 1107-9

9.1 Statement of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise authority of the Colorado Department of Labor's FAMLI Division (the "Division") to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to administrative determinations and hearing appeals.

3. Article 13.3, Title 8 (2023), Article 12, Title 5 (2023), and Article 4, and Title 24 (2023), C.R.S. are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

9.2 Definitions

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Administrative Decision" means a written decision made by the Division's administrative staff other than the hearings officers.

3. "Appellant" means a party filing an appeal with the FAMLI Appeals Unit ("Appeals Unit").

4. "Authorized representative" has the same meaning as 7 CCR 1107-8, Section 8.2.2.

5. “Claimant” means a person who has filed a FAMLI Claim, regardless of whether the person is a covered individual pursuant to C.R.S. § 8-13.3-503(3).

6. “Correct address” has the same meaning as 7 CCR 1107-8, Section 8.2.6.

7. “Determination” or “redetermination” means an administrative decision or a private plan decision that is designated as a “determination” or “redetermination” or is a decision that (1) explicitly or effectively denies all or part of a FAMLI Claim, (2) imposes fines, fees, or penalties, (3) identifies an overpayment or requires repayment of benefits, (4) awards damages, or other remedies, (5) makes an ultimate finding on an accepted grievance or complaint, or (6) withdraws the approval of a private plan or finds that a private plan committed a violation of the FAMLI Act or its implementing regulations. “Determination” does not include a Division notice that only informs a claimant or applicant that an application is incomplete or requests additional information.

8. “Division” means the Paid Family and Medical Leave Insurance Division of the Department of Labor and Employment created pursuant to C.R.S. § 8-13.3-508.

9. “FAMLI Claim” means a claim for “benefits” and “paid family and medical leave” as those terms are defined in provided under the FAMLI Act, C.R.S. § 8-13.3-5031 et seq.

10. "Good cause" has the same meaning as 7 CCR 1107-3, Section 3.2.11.

11. “Parties of record” means the appellant, the Division, parties listed on a notice of hearing, and any person permitted to join the proceedings after a notice of hearing is issued.

12. “Party” means a person explicitly identified as a “party” in these rules or who has a right or a legally cognizable interest potentially affected by the outcome of an appeal. The Division is a party to any appeal filed with the Appeals Unit of the Division.

13. “Person” includes natural persons and business entities with a recognized legal status in Colorado.

9.3 Determinations

1. The Division will issue and deliver determinations and redeterminations by U.S. first class mail or electronically to the parties at their correct addresses and include a statement regarding appeal rights.

2. The date of issuance of the Division's determination is the date the Division's determination is sent to the parties by mail or electronically to the parties, as indicated in the determination. The appeal deadlines are calculated from the Division's date of issuance.

3. Determinations shall be deemed final, and any information contained in any document or notice issued by the Division shall be deemed correct unless a party files a timely request for appeal according to these regulations.

4. No party can appeal a Division decision to a Division hearing officer unless the decision constitutes a determination. No party can appeal a determination of the Division to a court of

competent jurisdiction until such party has exhausted all administrative remedies provided in these rules, including appeal to a Division hearing officer.

5. Determinations must include some explanation of the facts forming the basis for the determination, citation to relevant provisions of the law, and the date the determination was issued and a notice of appeal rights.

9.4 Filing Appeals of Determinations

1. Any party adversely affected by a determination or redetermination may appeal it. A party cannot appeal a determination that has been completely replaced by a redetermination.

2. Parties are encouraged, though not required, to use the Division's appeal form. An appeal is procedurally valid only if it: (a) is timely filed with the Division, (b) includes a copy of the determination or redetermination at issue or sufficiently identifies the determination or redetermination appealed and the date of issuance, and (c) has been signed by the party or the party's authorized representative.

3. The Division will only consider appeals filed within forty-five (45) days of the date the Division issued the determination or redetermination in question unless there is good cause for delay and an extension of time up to an additional thirty-five (35) days to file an appeal. Allowing a private plan to resolve a pending appeal of a claim constitutes good cause for an extension of time up to thirty-five (35) days to file an appeal. An extension of time beyond thirty-five (35) days for any appeal requires extraordinary circumstances.

4. An appeal to the Division is considered "filed" with the Division when the appeal is properly sent by U.S. first class mail or electronically. Any appeal to the Division sent after 11:59 p.m. (Mountain Time Zone) is considered filed the next business day.

5. An appeal to the Division is considered "signed," or to have a "signature," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, a unique mark belonging to a specific person, or a typed name entered by the party or authorized representative in the signature area. By signing in any such fashion, the individual is deemed to have agreed and assented that the document is signed by such party.

6. Unless otherwise specified, deadlines in this rule may be extended up to forty-two (42) days for good cause and up to ninety-one (91) days for extraordinary circumstances.

9.5 Preliminary Issues for Filed Appeals

1. Upon receiving an appeal, the Appeals Unit will ensure that the appeal meets the requirements for a procedurally valid appeal. If the appeal is not procedurally valid, the Appeals Unit will send a notice of the procedural deficiency and provide the appellant five (5) days to respond to the notice of deficiency. The Appeals Unit can take any action it deems appropriate to address the deficiency, including dismissal of an untimely appeal. For good cause, the Appeals Unit may grant an extension of time not exceeding fourteen (14) days for a response to the notice of deficiency.

2. Once an appeal is determined to be procedurally valid, the Appeals Unit will open a case in the docketing system and send a notice to the appellant and the Division that the appeal has been accepted. The notice of acceptance will also be sent to any person that has received a notice of a determination or claim that is the subject of an appeal. The Appeals Unit will assign a hearing officer who will oversee the manner in which the appeal will be handled, including scheduling and sending a notice of any necessary hearings. A hearing will be scheduled to occur within thirty-five (35) days after an appeal is procedurally valid unless good cause exists for an extension of time. The Appeals Unit cannot schedule a hearing to commence more than ninety-one (91) days after an appeal is procedurally valid absent extraordinary circumstances. The filing of an appeal will not suspend or terminate a FAMLI Claim award unless and until a hearing officer modifies or overturns a determination at issue in an appeal.

3. Upon a party's request or the hearing officer's own initiative, the hearing officer may convene a prehearing conference to discuss the issues on appeal, questions related to party status, the evidence to be presented, and any other relevant matters that may simplify the proceedings, including resolving issues without a hearing if the material facts are undisputed.

4. Motions to disqualify a hearing officer must be made and addressed at the earliest opportunity consistent with the provisions of C.R.S. § 24-4-105(3), including the requirement of a good faith affidavit explaining the alleged disqualifying reasons. An unreasonable delay in requesting a disqualification can be considered a waiver of any objection to the assignment of a claim to a hearing officer. Previous adverse rulings will not be considered as a valid basis for disqualification.

9.6 Discovery, Subpoenas, and Evidence for Hearings

1. Upon the filing of an appeal, the Division or private plan may file with the Appeals Unit all the evidence it considered when making the determination at issue unless such evidence cannot be sent to a party consistent with C.R.S. § 8-13.3-516 and 7 CCR 1107-3, Section 3.8.10. Confidential documents and information shall not lose any protections from disclosure solely because an appeal was filed. The hearing officer may take any action the hearing officer deems necessary to ensure confidentiality consistent with C.R.S. § 8-13.3-516 and 7 CCR 1107-3.

2. Only the appellant, the Division, and persons admitted as parties to an appeal and witnesses they call may participate in a hearing before the Division and have access to the documents filed as part of the appeal. Parties may submit relevant testimonial and documentary evidence to the hearing officer in accordance with deadlines imposed by the Division or the assigned hearing officer.

3. Whenever a party files any documents with the Division, the party must also send the documents simultaneously to all parties of record. Evidence to be presented at a hearing must be sent to all parties of record at least ten (10) days before the hearing begins or as otherwise directed by a hearing officer. Failure to send documents to all other parties may be grounds for the hearing officer to limit issues or the presentation of evidence or both as determined by the hearing officer's sound discretion in the totality of circumstances.

4. No party may seek discovery without approval from the hearing officer and only upon a clear showing that the discovery is appropriate and necessary. To establish a clear showing, the party seeking discovery must (1) present sufficient evidence of a legitimate dispute of a material fact

and (2) clearly articulate the need for and appropriateness of the requested discovery to resolve the factual dispute.

5. The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents deemed necessary as evidence to resolve the pending appeal.

6. If a party or witness fails to obey a subpoena issued by the hearing officer, a party may apply to any district court of this state to order compliance with the subpoena. The court may exercise its power to issue a contempt citation to a person who fails to obey the order.

9.7 Hearings

1. The hearing officer shall have the power and authority to call, preside at, conduct hearings, and ensure the appeal process is fair to all parties on a case-by-case basis. Hearings will be conducted virtually with internet and telephone access. The hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, and to take any other reasonable steps the hearing officer deems necessary to resolve the pending appeal and control the hearing.

2. The hearing officer shall not communicate with a party unless all parties are present or simultaneously receive the hearing officer's verbal or written communication.

3. Hearings shall be conducted informally with as few technical requirements as possible. Only parties to the appeal may appear at hearings and present evidence. The hearing officer shall control the evidence taken during a hearing in a manner consistent with the due process rights of all the parties and to provide a fair hearing.

4. A hearing officer may make a finding of fact based on hearsay evidence only if it is reliable, trustworthy, and probative. When deciding whether to accept hearsay as evidence, the hearing officer may consider some or all of the following non-exclusive factors:

    A. Whether the statement was written and signed;

    B. Whether the statement was sworn to by the declarant;

    C. Whether the declarant was a disinterested witness or had a potential bias;

    D. Whether the hearsay statement is denied or contradicted by other evidence;

    E. Whether the declarant is credible;

    F. Whether there is corroboration for the hearsay statement;

    G. Whether the case turns on the credibility of the witnesses;

    H. Whether the party relying on the hearsay offers an adequate explanation for the failure to call the declarant to testify; and

I. Whether the party against whom the hearsay is used had access to the statements prior to the hearing or the opportunity to subpoena the declarant.

5. The hearing officer must preside impartially over administrative proceedings and hearings. The hearing officer may provide limited procedural guidance to parties so long as the hearing officer does not become an advocate for any of the parties.

6. Parties are entitled to at least fourteen (14) days advance notice of a hearing and advance notice of the issues that may be considered at a hearing according to the schedule ordered by the hearing officer. The hearing officer shall not permit a party to present evidence on issues at a hearing that have not been disclosed to all other parties before the hearing except to prevent manifest injustice. The hearing officer has reasonable discretion to control the administrative proceedings and ensure that the parties receive a fair hearing, including postponing hearings and granting additional time to the parties where appropriate.

7. All testimony at a hearing must be recorded by the Division but need not be transcribed unless the hearing officer's decision is appealed.

9.8 Appeal Decisions and Burdens of Proof

1. After conducting a fair hearing, the hearing officer shall decide each relevant issue properly raised during the proceedings and necessary to resolve the appeal. The hearing officer shall issue a written decision based solely on the evidence presented during the hearing and include findings of fact, conclusions of law, and an order. In deciding disputed issues of fact, the hearing officer shall not give deference to the Division's factual determinations. In deciding disputed issues of law, the hearing officer shall adhere to Department regulations and give some consideration to the Division's reasonable interpretations of the statute and regulations.

2. The party seeking a FAMLI Claim award or damages, the imposition of a fine, penalty, fee or interest, or any other relief, has the burden of proof to show the relief should be granted by a preponderance of the evidence. Where the Division proves the grounds for imposing fines, penalties, or fees, the amount of such fines, penalties, or fees shall be overturned or modified only if the employer or private plan proves that the Division abused its discretion.

3. The hearing officer's decision shall be made as soon as practicable after a hearing and constitutes a final agency action pursuant to C.R.S. § 24-4-106. The Division shall promptly send a copy of the hearing officer's decision to each party.

4. The hearing officer will issue written decisions in compliance with C.R.S. § 8-13.3-516 and will not disclose protected health information, the reason for leave, and wage replacement benefit amounts beyond the information necessarily and appropriately disclosed to the parties during an appeal proceeding.

5. Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in a district court of competent jurisdiction within thirty-five (35) days after the date the decision was sent to the party. Judicial review is limited to appeal briefs and the record designated on appeal.

6. If the Division or a court reverses or modifies a denial of a FAMLI Claim, the Division or private plan will pay the benefits as soon as practicable but no later than five (5) business days after the order awarding benefits.

9.9 Withdrawal and Dismissal of Appeals

1. If the party that filed the appeal does not participate in the hearing, the appeal may be dismissed if the hearing officers deems the appeal abandoned.

2. The appellant may withdraw their appeal at any time. If the appellant withdraws their appeal, they may not appeal the determination again unless they withdrew the appeal because of misinformation given by the Division or another party to the determination. If the appellant withdraws their appeal during the hearing, the hearing officer shall inform the appellant that withdrawal of their appeal will render the determination final.

Notice of Proposed Rulemaking

Tracking number

2023-00607

Department

1200 - Department of Agriculture

Agency

1203 - Plant Industry Division

CCR number

8 CCR 1203-1

Rule title

ADMINISTRATION AND ENFORCEMENT OF THE PESTICIDE ACT

Rulemaking Hearing

Date

10/18/2023

Time

09:30 AM

Location

via Zoom - link is contained in the hearing notice

Subjects and issues involved

The purpose of these proposed amendments is to include new definitions, and correct non-substantive numbering, formatting, and typographical errors. As well as create new parts, 13.4, 13.5, and 13.6 to comply with SB23-266.

Statutory authority

§§ 35-9-118(1), (2)(c)(I), and (7)(a) and (b), C.R.S.

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COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

"Rules And Regulations Pertaining To The Administration And Enforcement Of The Pesticide Act"

8 CCR 1203-1, Parts 1.2, 13.4, 13.5, and 13.6

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: October 18, 2023
TIME: 9:30 a.m.
LOCATION: This hearing will be held via Zoom
CALL INFORMATION: 1-719-359-4580
Meeting ID: 876 1509 7006
Passcode: 085802

In order to maintain a proper hearing record you are encouraged to pre-register by completing this Google form. If you do not have access to Google you may send your name and telephone number to Hollis.Glenn@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of these proposed amendments is to include new definitions, correct non-substantive numbering, formatting, and typographical errors. As well as create new parts, 13.4, 13.5, and 13.6 to comply with SB23-266.

The statutory authority for these rules is §§ 35-9-118(1), (2)(c)(I), and (7)(a) and (b), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Hollis.Glenn@state.co.us. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 720-560-6286. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

ADMINISTRATION AND ENFORCEMENT OF THE PESTICIDE ACT

8 CCR 1203-1

Part 1. Definition and construction of terms.

1.1. As used in these Rules, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa. All terms used in these Rules shall have the meaning set forth for such terms in the Act.

1.2. As used in these Rules, unless the context otherwise requires:

(a) "Act" means the Pesticide Act, Title 35, Article 9, C.R.S.

(b) "Applicant" means a person who applies for a registration or renewal of a registration under the Act.

(c) "Brand" or "Brand name" means the name, number or trademark, or designation applied to a pesticide of any particular description by the manufacturer, distributor, importer or vendor. Each pesticide differing in the ingredient statement, analysis, manufacturer or distributor, name, number or trademark shall be considered as a distinct and separate brand.

(d) "Certified applicator" means an individual who is certified or licensed to use or supervise the use of restricted use pesticides;

(e) "Distribute or sell" and other grammatical variations of the term such as "distributed or sold" and "distribution and sale" means the acts of distributing, advertising, offering for sale, holding for distribution, holding for sale, selling, bartering, or supplying in any fashion any pesticide product in this state.

(f) "Federal restricted use pesticide" means any pesticide classified for restricted use by the administrator of the Environmental Protection Agency under the FIFRA.

(g) "FIFRA"means the Federal Insecticide, Fungicide and Rodenticide Act including all amendments and rules and regulations.

(h) "Final printed labeling" means the label or labeling of the product when distributed or sold. Final printed labeling does not include the package of the product, unless the labeling is an integral part of the package.

(i) "Indoor pest control product" means a product used: 1) to prevent, destroy, repel, mitigate, or control pests within or around structural foundations and other parts of structures; and 2) for interior plant pest control.

(j) "Interior plant pest control" means pests found in or on house plants and other indoor ornamental plants kept or located within structures occupied by humans, including, but not limited to houses, apartments, offices, shopping malls, and other dwelling places, to control invertebrate pests that adversely affect such plants, including insects, mites, slugs, snails and nematodes; and to control plant diseases in such structures or sites.

~~(i)~~(k) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

~~(j)~~(l) "Labeling" means all labels and all other written, printed, or graphic matter:

(1) accompanying the pesticide or device at any time; or

(2) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the United States Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

~~(k)~~(m) "Liquid chemical sterilant product" means any liquid chemical sterilant product (including any product with sterilant or subordinate disinfectant claims) for use on a critical or semi-critical device, as defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321 (h) (incorporated by reference herein, later amendments not included). For purposes of this definition, the term "critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body; the term "semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

~~(l)~~(n) "Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide. The term also includes any device whose labeling includes or should include an establishment number issued pursuant to 40 C.F.R. § 167.20 (2016) (incorporated by reference herein, later amendments not included) except for those devices exempted in Part 14. The term also includes the characteristic designation by words, symbols, name, number, or trademark of a specific, particular pesticide or formulation thereof, under which the pesticide is distributed or sold in the State of Colorado. For more than one pesticide product to be considered the same pesticide product, each pesticide product must exhibit the same:

(1) product name;

(2) registrant name;

(3) manufacturer name;

(4) EPA registration number (if the pesticide product is subject to registration by EPA pursuant to the FIFRA); and

(5) labeling.

~~(m)~~(o) "Registrant" means any person who has registered any pesticide with the state of Colorado.

~~(n)~~(p) "State restricted use pesticide" means any pesticide which when used as directed or in accordance with the generally accepted practice, the Commissioner determines requires additional restrictions for that use to prevent unreasonable -adverse effects on the environment including, but not limited to people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

~~(e)~~(q) "Under the direct supervision" means the application of a pesticide by a competent person acting under the instructions and control of a certified applicator who is available when needed, even though said applicator is not physically present at the time and place the pesticide is applied.

Part 2. Status of products as pesticides.

A substance or mixture of substances will be considered to be a pesticide if:

2.1. The label or labeling of the product bears claims for use as a pesticide.

2.2. Claims or recommendations for use as a pesticide are made in collateral advertising such as publications, advertising literature which does not accompany the product, or advertisements by radio or television.

2.3. Claims or recommendations for use as a pesticide are made verbally or in writing by representatives of the manufacturer or distributor.

2.4. The product is intended for use both as a pesticide and other purposes.

2.5 The product contains one or more substances that are listed as active ingredients in any pesticide that has been registered by EPA as a pesticide under FIFRA and that have no significant commercially valuable use in the product as distributed or sold other than use for a pesticidal purpose.

Part 3. The registration system.

3.1. Every pesticide product which is distributed in this state must be registered with the Commissioner.

(a) The Commissioner may exempt certain pesticides from registration in accordance with §35-9-106(2), C.R.S. (incorporated by reference herein, later amendments not included).

(b) The following pesticide products shall not be exempt from registration;

(1) minimum risk pesticides as described under 40 C.F.R.§ 152.25(f) (2016) (incorporated by reference herein, later amendments not included);

(2) pesticides distributed under an experimental use permit, as described under 40 C.F.R. § 152.30(c)(1) (2016) (incorporated by reference herein, later amendments not included).

(3) pesticides distributed under an emergency exemption, as described in 40 C.F.R. § 152.30(e) (2016) (incorporated by reference herein, later amendments not included).

3.2. Each pesticide product shall be registered separately.

3.3. Repealed.

3.4. The annual application fee for registration or renewal of a registration shall be $205.00.

3.5. Repealed.

3.6. Any person is eligible to be a registrant.

3.7. Effect of registration: If a pesticide product is registered under the Act, no further registration under the Act is required unless the label or ingredient statement differ from the representations made in connection with registration.

3.8. The Commissioner will send all correspondence concerning the application and any subsequent registration information to the address provided by the applicant. It is the responsibility of the applicant and any registrant to ensure that the Commissioner has a current and accurate address. Any change of address submitted on the application form or renewal form shall result in a change of address for the registrant. Otherwise, any change of address must be in writing and specifically indicate an intention to change the official mailing address of the registrant.

3.9. Any change of address submitted to the Commissioner by a registrant will result in a change of address for all pesticide products registered by said registrant.

3.10. Applications and correspondence relating to registration should be submitted as specified by the Commissioner to:

Colorado Department of Agriculture Division of Plant Industry 305 Interlocken Parkway, Broomfield, CO 80021

3.11. At any time the Commissioner, under the authority of the Act, may require from the registrant, a description or descriptions of tests and the results thereof upon which labeling claims are made.

3.12. Effective date of registration. Registration of a pesticide product shall become effective on the date the application is approved and accepted by the Commissioner. A Certificate of Registration will be issued to the registrant for each pesticide product registered with the Commissioner.

3.13. Responsibility of a registrant. The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of a pesticide product.

3.14. Changes in labeling or ingredient statement. Changes in the labeling or ingredient statement of a registered pesticide product shall be submitted prior to any sales using the changed label or ingredients in Colorado. The exact changes shall be described.

3.15. Claims must conform to registration. Claims made for a pesticide product must not differ in substance from representations made in connection with registration or revised labeling submissions, including representations with respect to effectiveness, ingredients, directions for use, or pests against which the product is recommended. Any claims which differ in substance from representations made in connection with registration shall be described.

3.16. Compliance with the FIFRA. The Commissioner shall refuse application for registration of any pesticide product that is not in compliance with the FIFRA.

3.17. Failure to provide the information required by Section 3.11, Section 3.18 and/or Section 3.19 within 60 days from the date the first Notice of Lack of Compliance is printed, shall be considered an incomplete application and no registration or renewal of a registration for the pesticide product shall be issued.

3.18. Each applicant for a registration shall submit a signed, complete, accurate, and legible application, including: the form provided by the Commissioner; the application fee set by the Commissioner; unless provided on the application form, a list of each inert ingredient and its percentage when requested by the Commissioner; and a final printed label and labeling as it appears on the pesticide product in the marketplace.

3.19. Registration expiration and renewal:

(a) All pesticide registrations shall expire on December 31 of each year.

(b) Each applicant for renewal of a registration shall submit, prior to expiration on December 31, a signed, complete, accurate, and legible application, including: the form provided by the Commissioner and the application fee set by the Commissioner.

3.20. Repealed.

3.21. Repealed.

3.22. Repealed.

3.23. Repealed.

3.24. Repealed.

Part 4. Label requirements.

4.1. All pesticides except those pesticide products determined to be exempt from registration pursuant to § 35-9-106(2), C.R.S. (incorporated by reference herein, later amendments not included), and Part 3.1, that are distributed or registered in Colorado must have a label which conforms to this Part 4.

4.2. These Rules incorporate by reference rules of the Environmental Protection Agency, United States of America 40 C.F.R. §156 (2016) (later amendments not included) concerning labeling requirements and the rules of the Environmental Protection Agency, United States of America 40 C.F.R. §152.25(f) (2016) (later amendments not included) concerning minimum risk pesticides.

(a) Labels and labeling for pesticide products must comply with all of the labeling requirements of 40 C.F.R. §156 (2016), as incorporated above, unless exempted from federal registration pursuant to 40 C.F.R. §152.25(f) (2016), as incorporated above.

(b) Labels and labeling for pesticide products exempted from federal registration pursuant to 40 C.F.R. §152.25(f) (2016), as incorporated above shall:

(1) comply with 40 C.F.R. §152.25(f)(3) (2016), as incorporated above; and

(2) comply with all provisions of the act and these Rules except § 35-9-120(1)(g)(ii), C.R.S. (incorporated by reference herein, later amendments not included), and parts 6.1(i) and 6.1(j) of these Rules.

4.3. This Rule does not include later amendments to or editions of the incorporated material.

4.4. Repealed.

4.5. Repealed.

Part 5. Coloration and discoloration.

5.1. These Rules incorporate rules of the Environmental Protection Agency, United States of America 40 C.F.R.§ §153.140 through 153.155 (2016) (incorporated by reference herein, later amendments not included).

5.2. This Rule does not include later amendments to or editions of the incorporated material.

5.3. Repealed.

Part 6. Misbranding.

6.1. False and misleading statements. A pesticide or a device is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

(a) A false or misleading statement concerning the composition of the product;

(b) A false or misleading statement concerning the effectiveness of the product as a pesticide or device;

(c) A false or misleading statement about the value of the product for purposes other than as a pesticide or device;

(d) A false or misleading comparison with other pesticides or devices;

(e) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any governmental agency;

(f) The name of a pesticide product (except devices) which contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the names of the other ingredients are stated elsewhere in the labeling;

(g) A true statement used in such a way as to give a false or misleading impression to the purchase;

(h) Label disclaimers which negate or detract from labeling statements required. An example of a disclaimer which would render a product misbranded is: “The information furnished herein is provided gratuitously by the manufacturer who assumes no responsibility whatsoever for the effectiveness or safety of this product regardless of whether or not it is used as directed.”;

(i) Claims as to the safety of the pesticide or pesticide product or its ingredients, including statements such as “safe:, “nonpoisonous”, “noninjurious”, “harmless”, or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed”; or

(j) Non-numerical and/or comparative statements on the safety of the product, including but not limited to:

i) “Contains all natural ingredients”;

ii) “Among the least toxic chemicals known”;

iii) “Pollution approved”;

6.2. Justification of false and misleading statements not permitted. The use of any false or misleading statement on any part of the labeling, given as the statement or opinion of any person or based upon such statement or opinion shall not be justified nor may such statement be justified by the fact that the statement or opinion is actually that of such person.

Part 7. Refusal or cancellation of registration.

Any of the following causes is sufficient to justify refusal or cancellation of registration of a product:

7.1. If it is determined that the pesticide product will not perform its intended function;

7.2. If the labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

7.3. If found to be an imitation of or illegally offered for sale under the name of another pesticide or pesticide product;

7.4. If the labeling accompanying the pesticide product does not contain directions for use which are necessary, and if complied with, adequate for the protection of the public under customary conditions of use;

7.5. If the label does not contain the required warning or precautionary statements;

7.6. If the label does not bear an ingredient statement as required;

7.7. If any word, statement, or other information required to appear on the label or labeling is omitted or not prominently placed thereon and in such terms as to render it likely to be read and understood under customary conditions of purchase and use;

7.8. If a pesticide product does not warrant the proposed claims for it, or if the pesticide or pesticide product and its labeling and other material required to be submitted, do not comply with the act or these Rules;

7.9. If it is determined that, when used in accordance with label directions or in accordance with commonly recognized standards of practice, the pesticide product will generally cause, or is likely to cause if the pesticide or pesticide product is registered, unreasonable adverse effects on the environment including, without limitation, groundwater, vegetation (except the target pest) to which it is applied, living man or other useful vertebrate animals, and the person applying such pesticide or pesticide product; or

7.10. If the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder; provided, that no registration shall be revoked or refused until the registrant shall have been given an opportunity for a hearing by the Commissioner.

Part 8. Enforcement.

8.1. Collection of samples. Samples of pesticides and devices shall be collected by a designated agent. An official representative sample shall be one taken by the Commissioner or his designee. An unbroken original package shall be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official sample shall be a portion taken from one original package in a lot.

Part 9. Experimental use products.

9.1. Any pesticide product shipped or delivered for experimental use must be registered and the following information must be submitted to the Commissioner. If a pesticide product shipped or delivered for experimental use is registered in Colorado, no further registration is required. However, the following information must be submitted to the Commissioner.

(a) In addition to the information required for routine registration an application for registration shall include:

(1) the federal Experimental Use Permit number;

(2) a copy of the federal experimental use approval;

(3) a copy of the labeling;

(4) the Colorado contact for such use;

(5) if requested any information pertinent to the program being performed in Colorado.

9.2. A pesticide intended for experimental use shall not be offered or advertised for general sale.

Part 10. Distribution.

10.1. No person or business shall distribute any of the following:

(a) Any pesticide product which does not conform to its purported standard of quality.

(b) Any pesticide product except in the manufacturer's or registrant's original unbroken package, except for bulk, and there is affixed to such container a registered label.

(c) Any pesticide product which is not labeled, or on which the label is illegible in any respect.

(d) Any pesticide product on which the caps, lids, or other sealing devices on the container are not tight or secure. Defective, unsound or broken containers shall not be placed on display, sold, offered for sale or transported.

(e) Bags containing granular ready-to-use pesticides (including ready-to-use combinations of pesticide and fertilizer ingredients) shall not be considered broken if they are repaired in accordance with the following criteria.

(1) Any repairs to a broken bag must be sufficient to return the bag to its original condition of soundness such that no leakage can occur when the bag is subjected to normal handling.

(2) No repair may be made to a broken bag if the damage measures more than 3 inches in any dimension.

(3) All words, numbers, and warning symbols on the product bag must be legible and not obscured by the repair in any way.

(f) Any pesticide product which is misbranded or adulterated.

(g) Any pesticide product which has not been registered in accordance with the provisions of the Act.

(h) Any pesticide product in a refillable container for which the pesticide residue removal procedure was not conducted in accordance with Part 15 of these Rules.

10.2. Failure of any person or business to cease distributing any pesticide or pesticide product or device on which a written or printed cease and desist order has been issued in accordance with the Act shall be sufficient reason for the Department to enjoin said distribution.

10.3. Any pesticide that spills from a broken container in any area where a product is stored or displayed for sale must be cleaned up immediately and disposed of according to all applicable laws and regulations.

Part 11. Dealer licensing.

11.1. The Dealer Licensing System.

(a) Any person who distributes any restricted use pesticide to any other person must possess a valid pesticide dealer license.

(b) Each separate business location, including branch offices, and each separate business name must have a separate pesticide dealer license.

(c) Each applicant for a pesticide dealer license shall make application to the Commissioner. Said application shall be on a form furnished by the Commissioner and shall be accompanied by payment of an application fee of $50.00.

(d) Each pesticide dealer shall make an application to renew its license on or before the first working day of January for the year of renewal. Said application shall be on a form furnished by the Commissioner and shall be accompanied by payment of a $50.00 renewal fee.

(e) Licenses expire on January 1st of each year and must be renewed on an annual basis.

(f) Applicants for renewal of a pesticide dealer license whose applications are received after the first working day of January but received on or before February 1st must pay a penalty fee of 10%.

(g) No pesticide dealer license can be renewed until the entire fee is paid.

(h) If the application for renewal is not received on or before February 1, of the year following the year of licensure, the license will not be renewed and the dealer must apply for a new license.

(i) Any dealer distributing restricted use pesticides after the expiration date of their license and prior to their renewal or new license application acceptance date will be in violation of § 35-9-120(1)(f), C.R.S. (incorporated by reference herein, later amendments not included), and subject to civil penalties authorized under § 35-9-124, C.R.S. (incorporated by reference herein, later amendments not included).

11.2. Recordkeeping requirements for state and federal restricted use pesticides shall be as required by Section 13.3.

Part 12. Emergency exemptions.

The following general conditions are set in order to comply with provisions of exemptions which may be issued under Section 18 of the FIFRA (incorporated by reference herein, later amendments not included) for the use of pesticides in emergency situations. However, in addition, due to the highly unique and special nature of each exemption, each exemption shall have its own specific conditions.

12.1. Any Section 18 pesticide product must be registered in Colorado. If a Section 18 pesticide product is registered in Colorado, no further registration is required.

12.2. Definition and construction of terms. As used in this part, unless the context otherwise requires:

(a) "Authorization" means that document prepared by EPA and delivered to the Department by EPA stating the compound, the use and conditions for use under which approval for the Section 18 emergency exemption was granted.

(b) "Commercial applicator" means persons licensed by the state of Colorado as commercial applicators pursuant to §§ 35-10-101 to 128, C.R.S. (incorporated by reference herein, later amendments not included).

(c) "Permit" means a permit granted by the Department to persons for the sale or use of pesticides granted emergency exemption status under Section 18 of the FIFRA.

(d) "Section 18" means any exemption from registration under the authority of Section 18 of the FIFRA, and any rules or regulations thereto.

(e) "Section 18 pesticide" means any pesticide designated by the Commissioner for use in any Section 18 exemption.

12.3. Any pesticide compound determined to be a Section 18 pesticide shall maintain that status for the duration of the Section 18 authorization.

12.4. Permit Required.

(a) All persons wishing to sell, purchase, and/or use a Section 18 pesticide shall obtain a permit for such sale, purchase, and/or use from the Department of Agriculture prior to any such sale, purchase, and/or use. The Department may waive such requirement if such a permit is not included in the Section 18 authorization.

(b) In the event a permit is not required by a Section 18 authorization any and all individuals wishing to sell, purchase, and/or use a Section 18 pesticide shall be bound by all conditions and restrictions as set forth by the Commissioner, in the Section 18 authorization, and on the product label.

(c) Permits shall be requested by the submission of an application in the form prescribed by the Department.

(1) There shall be no charge for the issuance of a permit by the Department.

(2) Permits for the purchase and/or use of a Section 18 pesticide shall only be issued to persons licensed, registered, or certified by the Commissioner pursuant to §§ 35-10-101 through 128 C.R.S.

(3) Permits to sell a Section 18 pesticide shall only be issued to those persons who are dealers licensed pursuant to the Act.

(d) All permits shall be subject to the conditions specified and any and all conditions or restrictions which may appear on the approved product label or labeling.

(e) The permit shall authorize the sale or purchase and/or use of the pesticide product or products indicated in the Section 18 authorization. The sale or use of any other product containing the identical active ingredient(s) for control of the specified pest under the provisions of this permit is expressly prohibited.

(f) The Department may suspend or revoke any and all permits issued under these Rules in the event there is any reason to believe that the continued sale or use of the Section 18 pesticide by any or all persons presents an unreasonable hazard to man, any other

species, the environment or public or personal property. All administrative procedures and hearings shall be governed by the provisions of the Administrative Procedure Act.

(g) Any permit issued under these Rules may be suspended immediately if there is sufficient evidence to show the Section 18 pesticide was sold or used in violation of the conditions of the permit and/or in a manner so as to present an unreasonable hazard to man, any other species, the environment or public or personal property.

(h) Each permittee shall be furnished with a copy of the actual EPA Section 18 authorization by the Department.

12.5. Conditions of the Permit. The following conditions shall be placed upon the sale, purchase, and use of a Section 18 pesticide under the permits issued.

(a) Each Section 18 pesticide shall be subject to all specific restrictions and conditions as may be stated by the Commissioner and in the Section 18 authorization from the EPA to the Department and all permittees must abide by these conditions.

(b) No applications shall be performed in any area until the Department has determined that area to meet the qualifications for treatment as specified by the Commissioner and in the Section 18 authorization.

(c) No field or other site shall be treated unless it has been determined by the permittee or his representative that it fulfills each and all specific qualifications for treatment as specified by the Commissioner and in the Section 18 authorization.

(d) Under no circumstances shall applications be performed in any area to any site other than those specifically authorized by the Commissioner and in compliance with the Section 18 authorization.

(e) The Colorado Department of Agriculture must be notified in writing by the permittee within twenty-four (24) hours of knowledge of any adverse effects on man, any other species, the environment or public or personal property which result from the application of a Section 18 pesticide under any permit issued under the provisions of these Rules.

(f) All permittees shall keep records as required by the permit and must make such records available to the Department on request at any reasonable hour.

(g) All permittees shall submit such report(s) as required by the permit.

(h) All commercial applicators licensed pursuant to §§ 35-10-101 to 128, C.R.S. (incorporated by reference herein, later amendments not included) who are issued a permit under the provisions of these Rules shall take all necessary steps to notify their customers of the appropriate restricted entry, preharvest, crop rotation, root crop planting or other intervals, or feeding restrictions; and any other pertinent precautionary information as specified by the Commissioner, the Section 18 authorization to the Department, and the label. All such notification shall be in writing or be a copy of approved required labeling unless exempted by the Department and shall be in a timely manner or within such time period as may be specified by the Commissioner and in the Section 18 authorization so as to permit the customer to adequately comply with all restrictions and prohibitions.

(i) Persons permitted to apply, or applying, as the case may be, a Section 18 pesticide under these Rules shall not be construed to be pesticide dealers provided they do not engage in the resale for use of any Section 18 pesticide.

(j) The sale of any Section 18 pesticide for the purpose for which the Section 18 authorization was granted to any individual who does not meet the qualifications established by the Commissioner and of the Section 18 authorization as required is strictly prohibited. Violation of this provision will be deemed a violation of the regulations and Act, and may result in further administrative actions against the dealer or permittee or immediate suspension of the dealer permit.

12.6. Responsibilities of All Users and/or Dealers.

(a) Nothing herein shall be construed as abrogating applicator responsibility under the FIFRA or the Colorado Pesticide Applicators' Act, or as abrogating dealer responsibility under the FIFRA or the Colorado Pesticide Act.

(b) If the permit required has been waived, then no application, use, or sale shall be contrary to the requirements of the Commissioner, the Section 18 authorization, or the product's label.

(c) Storage and disposal of a Section 18 pesticide shall be in accordance with all provisions of the Commissioner, of the Section 18 authorization, the product's label, and all state and federal hazardous waste laws.

(d) All applications and sales shall be in accordance with all provisions established by the Commissioner and of the Section 18 authorization.

(e) All commercial applicators shall take all necessary steps to notify their customers of the appropriate restricted entry, preharvest, crop rotation, root crop planting or other intervals; or feeding restrictions; and any other pertinent precautionary information as specified by the Commissioner, in the Section 18 authorization to the Department, and on the label. All such notification shall be in writing or by copy of approved required labeling unless exempted by the Department.

(f) Any supplemental label or labeling for the use of a Section 18 pesticide must accompany the sale for use of such product(s).

(g) The Department may suspend the authorized sale or use of a Section 18 pesticide in the event there is any reason to believe that the continued sale or use of the Section 18 pesticide by any or all persons presents an unreasonable hazard to man, any other species, the environment, or public or personal property. All administrative procedures and hearings shall be governed by the provisions of the Administrative Procedure Act.

Part 13. Restricted and Limited use pesticides.

13.1. Pesticides containing the following active ingredients when used as herbicides are hereby declared to be state restricted use pesticides that may be distributed only to licensed dealers, licensed applicators, or their authorized agents. State restricted use pesticides shall not be distributed to any applicator who is not licensed in the appropriate category to apply that pesticide.

(a) Bromacil

(b) Diuron

(c) Monuron

(d) Prometon

(e) Sodium chlorate

(f) Tebuthiuron

(g) Sodium metaborate

13.2. Federal restricted use pesticides may be distributed only to licensed dealers, licensed applicators, or their authorized agents. Federal restricted use pesticides shall not be distributed to any applicator who is not licensed in the appropriate category to apply that pesticide.

13.3. Every pesticide dealer shall maintain at each licensed dealership location records of all transactions in which a state or federal restricted use pesticide is distributed by that dealership to any person. Records of each such transaction must be maintained for a period of 24 months after the date of the transaction, and must include the following information:

(a) The name of the licensed applicator, to whom the pesticide was distributed, and the name and address of his or her principle place of business.

(b) Either:

(1) The certification number on the document evidencing that person's certification, the State (or other governmental unit) that issued the document, the expiration date of the certification, and the appropriate categories in which the applicator is certified; or

(2) The pesticide dealer license number, if sold to another dealer.

(c) The product name, EPA registration number, and the Colorado special local need registration number, granted under section 24(c) of the FIFRA (incorporated by reference herein, later amendments not included) (if any) on the label of the pesticide;

(d) The quantity of the pesticide distributed in the transaction; and

(e) The date of the transaction.

(f) Restricted use pesticides may be distributed to a licensed applicator via an unlicensed person authorized by the licensed applicator to act as his or her agent for that purpose. If distribution is made through such an agent, the dealer records must also include:

(1) The name and current address of the authorized agent through which such distribution was made;

(2) A record of the applicator’s license showing the categories of licensure.

(3) A signed statement from the licensed applicator authorizing the agent to receive delivery of restricted use pesticides on behalf of that applicator.

13.4. Except as set forth in Part 13.5, any pesticide containing one or more of the following active ingredients is hereby declared to be a state limited-use pesticide that may be distributed only by licensed dealers.

(a) Acetamiprid

(b) Clothianidin

(c) Dinotefuran

(d) Imidacloprid

(e) Nitenpyram

(f) Nithiazine

(g) Thiacloprid

(h) Thiamethoxam

13.5. Pesticide products containing any of the neonicotinoid active ingredients outlined in Part 13.4 that are labeled for the following uses are exempt from the limited-use designation and dealer licensure requirements to distribute these products.

(a) For use in research;

(b) Pet care product;

(c) Products used by licensed veterinarians licensed pursuant to Article 315, Title 12;

(d) Indoor pest control product;

(e) Personal care product used for controlling lice;

(f) Products used in structural insulation;

(g) Products used as a wood preservative or in the manufacturing of wood preservatives;

(h) Bait products, including but not limited to bait station traps and scatter bait;

(i) Insect strip.

13.6. Effective July 1, 2024, any person distributing a pesticide product containing the neonicotinoid active ingredients outlined in Part 13.4 and that are not exempt pursuant to Part 13.5, must obtain a pesticide dealer license.

Part 14. Devices exempt from registration requirements.

14.1. The following classes of devices are not subject to the Act.

(a) Devices designed to deliver into burrows and ignite a mixture of propane and oxygen or similar combinations of explosive gases to control burrowing rodent pests.

Part 15. Pesticide refiller residue removal requirements.

15.1. Records. Refillers must maintain, at the refilling establishment, the registrant's written refilling residue removal procedure for each pesticide product distributed in refillable containers. These records must be maintained for the current operating year and for 3 years after that.

15.2. Refillers must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (a) of this Section and either paragraph (b) or (c) of this Section are satisfied:

(a) If required, each tamper-evident device and one-way valve is intact.

(b) The refillable container is being refilled with the same pesticide product.

(c) Both of the following conditions are satisfied.

(1) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(2) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3 (incorporated by reference herein, later amendments not included). Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

15.3 Refillers must clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve as required in part 15.2 of this Section. Refillers must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container.

15.4 This part 15 shall become effective August 16, 2011.

Part 16. – 18. Reserved

Part 19. Materials Incorporated By Reference

19.1 Certified copies of material incorporated by reference in these Rules is available for public inspection during regular business hours. This incorporated material may be obtained at a reasonable charge or examined by contacting the Pesticide Section Chief, Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the internet at:

https://www.law.cornell.edu/uscode/text/7/chapter-6/subchapter-II FFDCA;

https://www.law.cornell.edu/uscode/text/21/chapter-9 40 CFR; or

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl

Please contact the Department for assistance if you have difficulty in accessing any of these websites.

Part 20. Statements of Basis, Specific Statutory Authority, and Purpose

Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1968 through 1992 are no longer in the Departments files and are presumably in the state archives.

20.1 Adopted July 28, 1994 – Effective September 30, 1994

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under §35-9-118, C.R.S. (1993 Suppl.)

The purpose of these rules is to implement the provisions of the Pesticide Act, Title 35, Article 9, C.R.S. (1993 Suppl.).

These rules: establish procedures for registration of pesticides including experimental use products; establish requirements for pesticide labels; establish standards for coloration and discoloration of pesticides; establish what constitutes false and misleading statements; establish the reasons for refusal or cancellation of pesticide registration; establish the procedures for pesticide dealer licensing and record keeping requirements; establish the conditions for use of a Section 18 pesticide; and establish a list of pesticides whose use is restricted in the state.

Because of the revision of Article 9 of Title 35, and Article 10 of Title 35 (the Pesticide Applicators' Act) the language of the rules associated with the Pesticide Act needed to be changed to conform with the statutes. The language in Parts 1 to 13 now reflects the terminology in the current statutes. The language was also changed to conform with current terminology in the code of federal regulations where necessary. Other than Part 3 the requirements set out in Parts 1 to 13 remain basically unchanged from the rules in place.

The format and organization of the rules was also simplified.

Factual issues encountered when developing these rules include:

1. How to describe the administrative procedures for registering a pesticide product system so an applicant can understand and comply with them.

2. An application for registration, including a label, is received in the office. The pesticide product to be registered is then identified using the language on the label which accompanies the application. Often this label is not identical to, and sometimes does not even resemble, the label which appears on the product found in the marketplace. Inspections for compliance with the statute occur in the marketplace using data generated from the applications received in the office. Differences between the labels submitted for registration and the labels as they appear in the marketplace have caused numerous problems in enforcement complaints from registrants who believed their product to be registered.

3. It is not unusual for a registrant to submit several applications for product registration together with one check for payment of all applications.

4. It is not unusual to receive an application for registration of a pesticide product which is under Cease and Desist Order along with other applications for registration.

5. The state restricted use pesticide list has been in place since 1989. At that point in time the Cooperative Extension and/or the Department were receiving several complaints or reports each year concerning damage related to the use of the listed materials in landscape areas. Only one such case was reported last year.

6. Pesticides are regulated at the federal level under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Some rules pertaining to pesticides at the state level must be identical to those associated with FIFRA.

Policy issues encountered when developing these rules include:

1. To help resolve the dilemma addressed in factual issues concerning labels submitted with the application and those found on the container in the field. The rules now state the label to be submitted with the application for registration is to be the final printed label as it appears on the pesticide product in the field.

2. To resolve the dilemma of which application to process first when multiple applications for the same registrant are received at the same time it was determined the applications would be processed in the order in which the registrant submitted them, except as noted.

3. To be responsive to the needs of Colorado businessmen it was decided if multiple applications from the same registrant were received at the same time and any of those applications were for products which were under Cease and Desist Order, the applications for the products under Cease and Desist Order would be processed first, even if that was not the order in which they were submitted.

4. It appears the state restricted use list had the desired result. Consequently, the list will continue with a minor modification which removes a trade name of a product.

5. It was decided to incorporated by reference those regulations which are identical to the code of federal regulations instead of duplicating all of the language in these rules.

20.2 Adopted January 19, 1995 - Effective March 2, 1995

Statement of Basis and Purpose

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under §35-9-118, C.R.S. (1993 Suppl.)

The purpose of these rules is to implement the provisions of the Pesticide Act, Title 35, Article 9, C.R.S. (1993 Suppl.).

These rules: establish procedures for registration of pest control devices; and comply with the recommendations of Legal Services concerning consistency in wording with the statute.

Factual issues encountered when developing these rules include:

1. How to describe the administrative procedures for registering a pest control device so an applicant can understand and comply with them.

2. Pest control devices are regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

3. Rule 8.2 relating to the examination of pesticides samples failed to meet the incorporation by reference standards of §24-4-103 (12.5) of the Administrative Procedure Act C.R.S.

4. The date in Rule 11.1 does not coincide with the date of the statute.

Policy issues encountered when developing these rules include:

1. The Department needed to determine which pest control devices would require registration in order to apply and enforce the provisions in an equitable and consistent manner. After discussions concerning the numerous types of devices and device technologies, it was decided the manner which best achieved this was to use requirements already set forth in 40 CFR 150-189 and its associated interpretations and policies. Under these requirements producers of devices which work through the efforts of an individual, such as fly swatters or mouse traps, are exempted from registering their producing establishments; while producers of other devices must register their producing establishments. This requirement was used as the criteria for requiring registration with the Commissioner.

2. It was decided to use the same registration process already in place for pesticide products to administer the registration of devices with a few exceptions.

3. Methods used to analyze pesticides change constantly as new analytical instruments enter the marketplace, as new pesticides enter the marketplace, and as our own chemists modify methods to fit the instrumentation available to them. The statute does not require that the Department establish by rule the methods it will use to analyze pesticides. Consequently, it was decided to repeal the clause.

20.3 Adopted April 17, 1995 - Effective May 30, 1995

STATEMENT OF REASONS FOR ADOPTION OF EMERGENCY RULE

This rule is adopted under the Pesticide Act pursuant to §35-9-118 (2), C.R.S. (1994 Supp.) and pertains to the administration and enforcement of the registration of pesticides under the Pesticide Act.

Parts 4.1 and 4.2 of the Rules and Regulations Associated with the Pesticide Act state:

“All pesticides sold or registered in Colorado must have a label which conforms to this Part 4.”

“These rules incorporate rules of the Environmental Protection Agency, United States of America 40 C.F.R. §156.10.”

The rules in 40 C.F.R. §156.10 require such things as net contents, warning or precautionary statements, physical or chemical hazards, storage and disposal directions, etc.

The Commissioner has received application for registration of a “plant-pesticide”. This plant-pesticide has been registered by EPA. In so doing EPA is not requiring the label contain many of the elements set forth in 40 C.F.R. §156.10.

In order to register the plant-pesticide for distribution and use in Colorado the requirements set forth in part 4.2 must be modified to conform with current policy of EPA.

The immediate adoption of Parts 1.2 (j.5) and 4.5 is imperatively necessary and compliance with notice and hearing requirements of §24-4-103 of the Colorado Administrative Procedure Act would be contrary to the public interest.

20.4 Adopted December 6, 1999 – Effective January 30, 2000

STATUTORY AUTHORITY: C.R.S. 35-9-118 (2) and (3)

GENERAL DISCUSSION: To establish requirements for registration of pesticide products to reflect changes made in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); to codify existing policy for registration of discontinued products; and to make miscellaneous technical amendments.

20.5 Adopted November 9, 2000 – Effective December 30, 2000

Statutory Authority:

These permanent rules are adopted by the Commissioner of the Colorado Department of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (the “Act”) at §35-9-118 (2) and (3) C.R.S. (2000).

Purpose:

The purpose of this amendment is to: increase the amount of the annual application fee for the registration or renewal of a pesticide product registration from $70.00 to $80.00.

Factual and Policy Issues:

The factual and policy issues encountered in the proposal of this amendment are as follows:

(1.) The Commissioner adopted a rule change effective January 1, 2000 that established the registration renewal fee for pesticide products designated as discontinued. This rule reduced the registration renewal fee for the pesticide products designated as discontinued from $70.00 to $21.00.

(2.) In Fiscal Year 2000, this fee reduction decreased the pesticide product registration program's revenue by approximately $185,000.00.

(3.) Because of this loss of revenue, the pesticide product registration program expects that it will have personal services and operating expense deficits for Fiscal Year 2001.

(4.) The average pesticide product registration fee among the 50 states for calendar year 2000 is approximately $120.00.

(5.) The last pesticide product registration fee increase occurred in 1994 for the purpose of implementing the Agricultural Chemical Groundwater Protection Act. This fee change did not impact or produce any additional revenue for the pesticide product registration program.

(6.) The Department estimates that this proposed fee increase will be sufficient to meet the personal service and operating cost expenses of the pesticide product registration program for at least three years without additional fee increases.

20.6 Adopted August 29, 2002 – Effective October 30, 2002

Statutory Authority:

These amendments to the permanent rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (the "Act") at section 35-9-118 (2) and (3) C.R.S.

Purpose:

The purpose of these amendments is to:

1. Increase the amount of the annual pesticide fee for registration or renewal of a pesticide product registration from $80.00 to $95.00.

2. Eliminate "Discontinued" product registration. With this type of registration, the registrant affirms that they are no longer producing the particular pesticide product, and then pays a reduced fee of $21 for up to four years. After four years, the product registration is automatically cancelled.

3. Revise the rules to conform with the decision of Judge Babcock of The United States District Court for the District of Colorado in Bioganic Safety Brands, Inc., v. Don Ament, Colorado Commissioner of Colorado, Civil Action No. 01-B-1808.

Factual and Policy Issues:

The factual and policy issues encountered in proposing these amendments are as follows:

1. Rule changes affecting registration fees:

    a) The pesticide registration and dealer licensing activities of the Colorado Department of Agriculture are funded solely by the fees collected for pesticide registrations and dealer licenses. These funds are credited to the pesticide fund. Annual appropriations are made from this fund to carry out the purposes of the Act. Of the funds collected, 97% are from pesticide registration fees, and 3% from dealer license fees.

    b) The current pesticide or pesticide device registration fee is $80. Of this $80, $20 goes to the groundwater fund, and $60 goes to the pesticide fund.

2. Rule changes affecting “discontinued” pesticide registrations.

    a) About 30% of registered products are in “discontinued” registration. These products pay a registration fee of $21. Of this $21, $20 goes to the groundwater fund, and only $1 goes to the pesticide fund.

    b) Maintaining and processing discontinued product registrations increases administrative efforts and costs. The $1 fee for these products does not support the administrative costs involved.

    c) There have been numerous cases of registrants requesting to change products back from “discontinued” to a normal active registration status. This was not anticipated to be a reversible process.

    d) There are some cases of products with cancelled federal registrations being renewed as “discontinued” in Colorado, even though sales are now illegal under federal law.

    e) The large number of registered products that are in “discontinued” status has contributed to the current financial shortfall in the pesticide registration program.

    f) Pesticides are registered on a calendar year basis, with most revenue received during the December-January registration renewal period. The Colorado fiscal year is on a July-June period. At the beginning of the 2003 fiscal year (July, 2002) the fund balance (including reserve fund balance) will be insufficient to pay expenses for the following months. By October of 2002, the projected fund deficit is about $150,000.

    g) With the proposed changes to the fee structure, the pesticide fund should be returned to a sound financial footing by the end of FY04, with funds sufficient to operate the program until the renewal period and a reserve reestablished for future emergencies or economic changes.

    h) Further registration fee increases for the portion allocated to the pesticide fund are not anticipated for the next five years.

3) Rule changes to conform with the decision of Judge Babcock of United States District Court for the District of Colorado in Bioganic Safety Brands, Inc., v. Don Ament, Colorado Commissioner of Colorado, Civil Action No. 01-B-1808.

    a) Section 35-9-120(1)(g)(II), C.R.S. states: “It is a false representation to make claims as to the safety of any pesticide or device or their components or ingredients, including, but not limited to, such claims as “safe”, “noninjurious”, “harmless”, or “nontoxic to humans and pets”, with or without such qualifying phrases as “when used as directed” and “when properly applied”.

b) The Pesticide Act Rules include the following as prohibited false and misleading statements on pesticide labels:

"(i) Claims as to the safety of the pesticide or pesticide product or its ingredients, including statements such as "safe:, "nonpoisonous", "noninjurious", "harmless", or "nontoxic to humans and pets" with or without such a qualifying phrase as "when used as directed"; or

(ii) Non-numerical and/or comparative statements on the safety of the product, including but not limited to:

i) "Contains all natural ingredients"

ii) "Among the least toxic chemicals known"

iii) "Pollution approved";"

c) In the court decision referenced above, Judge Babcock ruled that the sections of the Act and Rules prohibiting safety claims on labeling of pesticides exempted from federal regulation as minimum risk pesticides (section 25(b) of FIFRA) are preempted by FIFRA. This Pesticide Act prohibition with regards to Bioganic Shoobug insect repellant was declared a violation of both the First Amendment (free speech) and the Commerce clause of the U.S. Constitution.

d) The Commissioner did not appeal this ruling.

e) The proposed amendments conform to the order issued in this case.

20.7 Adopted October 19, 2006 – Effective January 1, 2007.

Statutory Authority:

These amendments to the permanent rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (the "Act") at §§ 35-9-118 (2) and (3), C.R.S.

Purpose:

The purpose of these amendments is to:

1. Change references to licensed applicators to recognize that CDA will be licensing private pesticide applicators as of January 1, 2007.

2. Modify pesticide dealer licensing requirements to include record-keeping requirements for federal restricted use pesticides.

Factual and Policy Issues:

The factual and policy issues encountered in proposing these amendments are as follows:

1. House Bill 1274 amended the Pesticide Applicator Act (Title 25, Article 10) to authorize the CDA to begin issuing licenses to private pesticide applicators on and after January 1, 2007 and to require that any person acting as a private applicator using or supervising the use of restricted use pesticides be licensed as a private applicator by the Commissioner.

2. Historically private pesticide applicators making pesticide applications in Colorado have been licensed by the Environmental Protection Agency (“EPA”), specifically EPA region 8, Denver, Colorado. Once CDA assumes responsibility for licensing private applicators, EPA will cease issuing such licenses. We anticipate that this transfer of authority will take place on January 1, 2007.

3. Part 13 of the current rules for the Pesticide Act allows for the permitting of each user of a section 18 pesticide, and requires that each permittee be either licensed by the Commissioner or licensed with EPA region 8, Denver, Colorado as a private applicator.

4. The current rules of the Pesticide Act only require recordkeeping on the part of licensed dealers for state restricted use pesticides, not federal restricted use pesticides.

5. EPA currently imposes record-keeping requirements on Colorado pesticide dealers of federal restricted use pesticides, under the authority of FIFRA §11(a)(1) and CFR 171.11(g). However, this federal authority only exists in any state in which the EPA conducts a certification program. Once CDA takes over the private applicator certification program from EPA region 8, federal authority to require Colorado pesticide dealers to keep records concerning federal restricted use pesticides will cease.

20.9 Adopted January 4, 2007 – Effective March 4, 2007.

STATUTORY AUTHORITY:

These amendments to the Rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (“Act”), § 35-9-110 (2), C.R.S.

PURPOSE:

The purpose of these amendments is to exempt a certain class of devices from the registration requirements of the Act.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in proposing these amendments are as follows:

1. The Act requires certain devices to be registered, and authorizes the Commissioner to designate which classes of devices are subject to this requirement.

2. Colorado producers are suffering an economic loss due to an increase in burrowing animals in and around agronomic fields and in rangeland areas. Black-tailed prairie dogs have been increasing in recent years across eastern Colorado. Although exact figures are not available from most agronomic production areas, the Comanche and Pawnee National Grasslands have documented increasing number of prairie dog colonies, with a 79% increase in active colonies in 2004 and a 30% increase in 2005. The overall hectares affected has more than doubled between 2003 and 2005 (from 2680 ha to 6323 ha).

3. The Commissioner has determined that destructive rodents pests, particularly prairie dogs, pose a significant threat to agricultural production in this State, and that additional control methods, including the devices that are the subject of this rulemaking, are needed to protect the public welfare.

4. The devices proposed for exemption from registration, which inject a mixture of propane and oxygen into the burrow and then ignite it, are currently available and widely used in adjacent states. Until recently, however, the use of these devices in Colorado was considered a prohibited

method of take by the Colorado Division of Wildlife ("DOW"). On November 1, 2006, a new DOW regulation took effect allowing the use of such devices. DOW decided to allow the use of these devices in response to the urgent need of agricultural producers to have better control methods for burrowing animals.

5. Because DOW has regulatory authority over use of such devices, the regulation of the distribution of these particular devices under the Act is duplicative and unnecessary. Due to the length of time that registration of a new device under the Act typically requires, the Commissioner adopted emergency amendments to the Rules, effective November 13, 2006, exempting this class of devices from registration to permit the timely use of these devices to control prairie dogs. These permanent amendments to the rules continue this exemption.

20.10 Adopted August 12, 2008 – Effective September 30, 2008.

STATUTORY AUTHORITY

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act (the "Act"), §§ 35-9-118(2)(c),(f), and (h), C.R.S.

PURPOSE

The purpose of these proposed rules is to:

1. Amend Rule 10.1 to specify conditions to allow distribution of repaired bags containing certain pesticides.

2. Create a new Rule 10.3 to require distributors to properly clean up and dispose of pesticides when pesticide spills occurred.

3. Amend Rule 13.1 and create a new Rule 13.2 to restrict distribution of State and Federal Restricted Use Pesticides to licensed dealers, licensed applicators, and their authorized agents and only for uses allowed by the applicator's license category.

4. Amend current Rule 13.3 to require pesticide dealers to maintain records of any distribution of a State or Federal Restricted Use Pesticide to an authorized agent of a licensed applicator.

FACTUAL AND POLICY ISSUES

The factual and policy issues encountered when developing these rules include:

1) Rules 10.1(b) and (d) currently do not allow any distribution of a pesticide except in its original unbroken container. The CDA believes that if bags containing granular ready to use pesticides or ready-to-use combinations of pesticide and fertilizer ingredients can be repaired to their original condition and the product's label does not become misbranded in the process, sale of such products should be allowed to facilitate application to a labeled site and minimize disposal of these pesticides in Colorado landfills. CDA proposes to amend Rule 10.1 to create guidelines to allow this practice.

2) CDA is proposing to create a new Rule Part 10.3 to require distributors to clean up and dispose of any pesticide product that spills from a broken container to prevent any pesticide exposure to customers or employees.

3) Currently, Rule 13.1 requires that State Restricted Use Pesticides only be distributed and used by licensed applicators or persons under their direct supervision and only for uses covered by the

applicator's licensure category(s). Part 13 of the Rules only addresses distribution and use of State Restricted Use Pesticides, but it does not currently address distribution and use of federal restricted use pesticides.

The CDA is proposing to amend Rule 13.1 and create a new Rule 13.2 to clarify that both state and federal restricted use pesticides may only be distributed to licensed dealers, licensed applicators or their authorized agents who are licensed in the appropriate category to use that product.

4) Prior to January 1, 2007, EPA was performing restricted use pesticide dealer record inspections and, under 40 C.F.R. §171.11(g)(2)(ii), required dealers to maintain a record of any distribution of an RUP to an uncertified agent of a certified applicator documenting that the RUP would be used by a certified applicator or persons under their supervision.

CDA is proposing to amend current Rule 13.3to require pesticide dealers to maintain records of any distribution of an RUP to a licensed applicator through an authorized agent.

20.11 Adopted July 16, 2009 – Effective August 30, 2009.

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act (the "Act"), §§ 35-9-107(2), and 35-9-118(3)(a) and (b) C.R.S.

Purpose

The purpose of this proposed rule amendment is to amend Rule 3.4 to increase the annual pesticide registration fee from $95 to $165.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Under 35-9-118(3)(a) the Commissioner has the authority to promulgate Rules to determine the annual registration fee for each pesticide registered in the state of Colorado.

2. On January 1, 2007, the CDA obtained primacy over all private applicators.

3. CDA's budget projections for the private applicator program took into account the initiation of the program prior to any revenue generation, projected expenses to administer the program and projected revenue from private applicator licensing over a 4 year period. Budget projections showed an annual revenue shortfall of $250,000. To account for this shortfall CDA combined all pesticide cash funds and subsidized the private applicator expenses through a surplus in the pesticide registration fund. This was done to maintain private applicator examination and licensure fees at less than $100.

4. The pesticide applicator program, which licenses commercial applicators, has not raised its fees to cover rising costs since 1994, when business licensure fees were increased to $350, and 2003, when examination licensure fees were increased to $100. Expenses in the pesticide applicator program have outpaced revenues in 2007 and 2008 by an average of $80,000. These shortfalls have been covered by the pesticide registration fund and EPA grant funds.

5. In 2007 the pesticide registration fund balance was $670,517. In FY 07 and FY 08 the private applicator program and the commercial pesticide applicator program operated at an average loss

of $251,000. In FY 2009 the pesticide program is projected to be at a $250,000+ loss, depleting the remaining pesticide registration funds at the end of FY 2009.

6. In 2009 and 2010 the administration of the private applicator exam and the commercial applicator exam will be shared between a private company, Metro Institute, Colorado State University and CDA. This is being done to allow private applicators to take their examination on-line and allow proctored computer based examinations with CSU and CDA. This will provide an easier, more accessible and improved testing environment for the applicator community; however, it will increase CDA's program expenses to maintain the examination software and hardware and result in a loss in revenue with each examination administered by Metro Institutes or CSU.

7. The current registration fee is set in the Pesticide Act Rules, Part 3.4, which is currently $95. The CDA registers an average of 11,000 pesticide products per year.

8. The CDA is proposing a fee increase of $70, making the new registration fee $165. The fee increase will generate, based on average registration renewals, an additional $770,000 in revenue. This will cover all projected expenses, allow the CDA to resolve the deficit created in FY 2010, rebuild its fund balance, cover increases in expenditures and allow program growth in future years without having to increase pesticide applicator licensure fees.

9. Under 35-10-118(3)(a) any fee collected under the pesticide registration program shall have an increment approved by the Agricultural Commission to fund the Groundwater Protection Program. Currently the Groundwater increment is set at $30. In conjunction with this rulemaking, CDA plans to ask the Agricultural Commission to approve an increase in the increment from $30 to $40 dollars. This will bring an additional $110,000 to the Groundwater Program to cover increased program expenses and allow for growth in future years.

10. Twenty-one states have pesticide registration fees that exceed $165 per product, the highest being $750 per product; ranking Colorado twenty-second in comparison to the nation.

20.12 Adopted October 21, 2010 – Effective November 30, 2010.

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act ("Act"), specifically §§ 35-9-118(2)(f), (g), (h) and (i), C.R.S.; § 35-9-117, C. R.S.; and § 35-9-117.5, C.R.S.

Purpose

The purpose of these proposed rules is to:

1) Create new Parts 3.1(a) & (b), The Registration System, to conform with new statutory provisions in regards to exempting pesticides consistent with the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA").

2) Repeal duplicative provision in Part 3.5.

3) Parts 3.10, 3.11, 3.12, 3.15, 3.18 and 3.19 are amended to update registration requirements, clearly reflect current business procedures and set registration expiration and renewal dates in Rule.

4) Repeal outdated business procedures, Parts 3.20 through 3.24.

5) Amend Parts 4.1 and 4.2 to reflect new statutory provision that allows CDA to exempt certain pesticides and update references to 40 C.F.R.

6) Create a new Part 11.1(i) to clearly state it is a violation for a dealer to sell an RUP after the expiration date and prior to the renewal of its dealer license.

7) Create a new Part 15. Part 15.1 creates recordkeeping requirements for pesticide refillers. Part 15.2 creates cleaning guidelines for refillable containers. Part 15.3 creates cleaning requirements when tamper-evident devices or one-way valves are not intact. Create a new Part 10.1(h) to prohibit distribution of a pesticide product in a container that has not had the residue removal procedure performed.

8) Update application submission language, address information, references to 40 C.F.R. and references to pesticide products through the rules.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. S.B. 10-034 changed the Act to permit the Commissioner to exempt certain pesticides from registration consistent with FIFRA. Part 3.1(a) reiterates the statutory provision that CDA may exempt products in accordance with FIFRA. Part 3.1(b) specifies certain products that are not exempt from registration in Colorado. CDA will exempt certain pesticides from registration through policy.

2. Part 3.5 is being repealed consistent with the recent repeal of the provisions in the pesticide act that specified collection of a penalty fee from registrants upon registration of a product that had previously been found unregistered in the marketplace.

3. Parts 3.10, 3.11, 3.12, 3.15, 3.18 and 3.19 are amended to update outdated language in the registration requirements, to clearly reflect current business procedures and set registration expiration and renewal dates in Rule as allowed now by S.B. 10-034. The ability to change renewal dates in Rule will allow CDA to stagger registration renewal dates and spread the work load of processing 11,000+ registration renewals if CDA chooses to in the future.

4. Parts 3.20 through 3.24 are business procedures that were placed in Rule in 1996 due to a back log of registration requests and complaints from industry. CDA has since modified procedures and registration processes to avoid backlogs. Repeal of these provisions will allow these processes to be more efficiently addressed through CDA's business procedures and policies.

5. All pesticides registered in Colorado must have labeling that conforms to provisions outlined under 40 C.F.R. § Part 156, which describes what elements must be on a pesticide label such as ingredient statements, net weight, EPA registration number, etc. The existing language in Part 4.1 requires all pesticides to meet these labeling requirements except liquid chemical sterilants. The amendment to Part 4.1 now addresses the additional authority provided as a result of S.B. 10-034 to exempt certain pesticides from registration by clarifying that those pesticides are exempt from the labeling requirements in Part 4.2. Part 4.2 was amended to update references to 40 C.F.R. that detail labeling requirements for pesticides required to registered in Colorado pursuant to Part 3.1 or the Pesticide Act.

6. Pesticide dealer licenses expire on December 31 of each year. CDA has found during records inspections that the some dealers continue to sell RUPs during the time period that their license was expired and prior to their renewal or a new application being submitted. The creation of a new Part 11.1(i) will clearly state that it is a violation, subject to civil penalties, for a dealer to sell an RUP after the expiration date and prior to the renewal or new application for a dealer license.

7. Section 19(f), Residue Removal Requirements, of FIFRA requires that states must have the authority to ensure pesticide refillers comply with the residue removal requirements. CDA historically has only had the authority to regulate registered pesticides from the distribution point forward and had no authority to regulate producer establishment or refiller establishment activities. S.B. 10-034 amended the Pesticide Act to provide CDA the authority to regulate producer establishments for the purpose of enforcing and ensuring compliance with the federal pesticide residue removal requirements. A new Part 15 was created to conform to the statutory provisions that require pesticide refillers to maintain records and clean refillable containers prior to distribution.

   A new Part 10.1(h) was created to prohibit distribution of a pesticide product in a container that has not had the residue removal procedure performed. Part 10.1(h) will make it a violation to distribute a product if the pesticide residue removal procedures have not been conducted in accordance with Part 15 of the Rule.

8. Throughout the Pesticide Act CDA is updating application submission language, such as applications must be “postmarked”, to remove impediments for future electronic submissions; updates to CDA’s address, references to 40 C.F.R. and references to pesticide products to ensure the Pesticide Act clearly reflects CDA’s current business practices and maintains consistent language throughout the Act.

20.13 Adopted November 10, 2015 – Effective December 30, 2015.

Statutory Authority

These amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Act (“Act”), specifically § 35-9-118(2), C.R.S

Purpose

The purpose of these proposed Rules is to update language to reflect the Department’s current physical address and websites for materials incorporated by reference. Specifically:

1. Update Part 3 and Part 19 with the Department’s current address.

2. Update Part 19 with current website links.

3. Correct formatting and grammatical errors.

4. These amendments incorporate changes as a result of the Department’s Regulatory Efficiency Review Process.

5. Rule 12.4 is being updated to reflect the changes that resulted in the Department taking over the certification and regulation of Private Pesticide applicators in 2007 and who are no longer certified through the EPA.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. In May of 2014 the Colorado Department of Agriculture moved from 700 Kipling St, Denver, CO to 305 Interlocken Parkway, Broomfield, CO. Part 3 of the Rule outlines registration requirements and references the Department’s address for submission. Part 19 outlines where certified copies of materials incorporated by reference may be obtained, which references the Department’s

address as well. The proposed amendments update the Department's address in each of these Parts.

2. Part 19 provides website address where materials incorporated by reference may be obtained at no cost. The proposed amendments update these web addresses.

20.14 Adopted November 9. 2016- Effective December 30, 2016

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act ("Act"), specifically § 35-9-118(2)(f), C.R.S

Purpose

The purpose of these proposed rules is to:

1. Amend Part 2 of the Rule to further clarify when substances or mixture of substances will be considered to be a pesticide subject to regulation under the Act.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Part 2 of the current Rule lists several factors the Department considers in determining if a substance or mixture of substances is a pesticide that is subject to regulation under the Act, including: (1) if a product bears pesticidal claims; (2) if collateral advertising makes pesticidal claims or recommendations; (3) if pesticidal claims are made verbally or in writing by the manufacturer or distributor and; (4) if the product is intended for use as a pesticide or other purpose.

2. Part 2 does not address products that contain pesticides where the manufacturer or distributor has made no pesticidal claims or statement of intended use. This amendment clarifies that the physical presence of a pesticide in a product, for which there is no significant commercially valuable non-pesticidal purpose when the product is used as intended (e.g., applied to the leaves of a plant), is sufficient to establish that the product is a pesticide subject to regulation under the Act – regardless of the lack of any pesticidal claims, advertising or statements or intent by the distributor.

3. Recently, it came to the Department's attention that a product was being sold and distributed in Colorado. This product was sold as a leaf polish and made absolutely no pesticidal claims. The product was tested and found to contain the pesticide active ingredient pyrethrin. The Department has subsequently identified other products sold for use on plants that contain other pesticides not disclosed on the label or mentioned in any of the distributor's product advertising.

4. This amendment makes clear that any such product is considered a pesticide under the Act and thus must be registered under the Act in order to be legally distributed in this state. Products containing pesticidal substances that are not registered are subject to stop sale orders and /or civil penalties.

5. This amendment to the Rules implementing Colorado's Pesticide Act compliments the federal regulations implementing the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 40 C.F.R. §152.15, which similarly requires registration under FIFRA of products containing active ingredients that have no non-pesticidal use, regardless of the absence of pesticidal claims.

20.15. Adopted September 20, 2017 - Effective November 30, 2017

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act ("Act"), specifically § 35-9-118(2)(f) and (h), C.R.S.

Purpose

The purpose of the proposed Rules is to:

Amend Parts 1, 3, 4, and 5 of the Rule to cite the most current version of Title 40 of the Code of Federal Regulations ("C.F.R.").

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. On February 26, 2016, the Environmental Protection Agency revised 40 C.F.R Part 152 to more clearly describe the active and inert ingredients that are permitted in products eligible for the minimum risk pesticide exemption.

2. 40 C.F.R. is incorporated by reference in the Act at Part 1, Definitions and Construction of Terms; Part 3, The Registration System; Part 4, Label Requirements; and Part 5, Coloration and Discoloration. The last 40 C.F.R. date referenced in the Act is 2009.

3. Updating the C.F.R. date reference to 2016 ensures that CDA's administration of the Act is consistent with current Federal law concerning minimum risk pesticide exemptions.

20.16. Adopted September 17, 2019 – Effective October 30, 2019

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to the authority under the Pesticide Act ("Act"), specifically §§ 35-9-107(2) and 35-9-118(3)(a), C.R.S

Purpose

The purpose of these proposed amendments is to:

Amend Part 3 of the Rules Pertaining to the Administration and Enforcement of the Pesticide Act (the "Rule") to increase Pesticide Registration fees by $40 to increase funding for the Department's state waters protection efforts as expanded by Senate Bill 19-186.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Pursuant to section 35-9-118(3)(a), C.R.S., any fee collected under the pesticide registration program shall have an increment approved by the Agricultural Commission to fund the Groundwater Protection Program. Currently, the Groundwater increment is set at $40.

2. During the 2019 legislative session, the Colorado General Assembly introduced SB 19-186, effective August 2, 2019. SB 19-186 modified section 35-9-118(3)(a), changing “groundwater protection efforts” to “state waters protection efforts.” This change expanded the scope and cost of implementing the program.

3. The current pesticide registration fee is set forth in the Pesticide Act, Part 3.4, and is $165. The Department of Agriculture registers an average of 14,000 pesticide products per year.

4. The Department of Agriculture proposes a fee increase of $40 per pesticide product registered in Colorado, increasing the registration fee to $205. The fee increase will generate, based on average registration renewals, an estimated $560,000 to the state waters program to cover increased program expenses.

5. SB 19-186 appropriated $239,592 for the 2019-20 fiscal year to assist with the implementation of the state water sampling program. Subsequent to the first year of implementation, the estimated annual budget to operate the full state waters program will be $623,605. The remaining expenditures, not covered by the pesticide registration funding increase, will be realized by fertilizer tonnage fee revenues, as set forth in SB 19-186.

6. The Department discussed the proposed $40 increase to pesticide registration fees with the Pesticide Advisory Committee on April 22, 2019, at a regularly scheduled committee meeting in accordance with section 35-9-118(3)(a), C.R.S.

7. In 2017 the Virginia Department of Agriculture conducted a national survey on state pesticide registration fees. Thirty-six states responded; of those twelve states have pesticide registration fees that exceed $205 per product, the highest registration fee being set at $1,150 per product. Colorado’s proposed fee is thirteenth in comparison to those states responding.

20.17. Adopted November 8, 2023 – Effective December 30, 2023

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to her authority under the Pesticide Act ("Act"), specifically §§ 35-9-118(1), (2)(c)(I), and (7)(a) and (b), C.R.S.

Purpose

The purpose of these proposed amendments is to:

1. Amend Part 1.2 to include new definitions for the terms “indoor pest control product” and “interior plant pest control.”

2. Create a new Part 13.4 designating any pesticide containing one or more listed neonicotinoid active ingredients to be a state limited-use pesticide in the State of Colorado that may only be distributed by licensed dealers.

3. Create a new Part 13.5 exempting certain pesticide products containing those neonicotinoid active ingredients from designation as a state limited-use pesticide based upon specific use patterns identified on the pesticide product label.

4. Create a new Part 13.6 requiring that pesticide products containing the listed neonicotinoid active ingredients in Part 13.4 that are not otherwise exempt pursuant to Part 13.5 may only be distributed by licensed pesticide dealers starting July 1, 2024.

5. Amend the Rules to correct non-substantive numbering, formatting, and typographical errors.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. On May 17, 2023, SB23-266 was signed into law.

2. SB23-266 required that the Department designate certain neonicotinoid pesticides as limited-use pesticides by January 1, 2024. A new Part 13.4 designates any pesticide containing one or more of eight listed neonicotinoid active ingredients to be a state limited-use pesticide that may only be distributed by a licensed dealer.

3. SB23-266 also exempted certain pesticide products containing the identified neonicotinoid active ingredients from designation as a state limited-use pesticide if those pesticide products are used for academic research or if the pesticide product's label includes one or more specific use patterns. A new Part 13.5 exempts pesticide products containing the listed neonicotinoid active ingredients from classification as a limited-use pesticide if the product label includes one or more of the listed use patterns.

4. One of the exempted use patterns in Part 13.5 is if the neonicotinoid pesticide product label permits use as an "indoor pest control product." Because that term was not defined in SB23-266, the Department added a definition of "indoor pest control product" at Part 1.02(i), as well as an associated definition for "interior plant pest control" at Part 1.02(j).

5. SB23-266 requires licensure as a pesticide dealer to sell certain neonicotinoid pesticides. A new Part 13.6 requires licensure as a pesticide dealer to distribute pesticide products containing any of the neonicotinoid active ingredients in Part 13.4, except for those pesticide products exempted under Part 13.5, effective July 1, 2024.

Notice of Proposed Rulemaking

Tracking number

2023-00606

Department

1200 - Department of Agriculture

Agency

1203 - Plant Industry Division

CCR number

8 CCR 1203-2

Rule title

RULES AND REGULATIONS PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE PESTICIDE APPLICATORS' ACT

Rulemaking Hearing

Date

10/18/2023

Time

10:30 AM

Location

via Zoom - link is contained in the hearing notice

Subjects and issues involved

The purpose of these Rules is to incorporate new federal certification and training requirements pursuant to 40 C.F.R. Part 171, to update the Rules consistent with requirements in Senate Bill 23-192 (SB23-192), and to clarify existing Rule requirements. Specifically, the revisions to Parts 1, 2, 4, 5, 8, 9, 10, 12 and 15.

Statutory authority

§§ 35-10-112(1)(e) and (f), C.R.S., and §§ 35-10-118(2)(a) (d), (3)(a) (c), (4), (5) and (9), C.R.S.

Contact information

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COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

"Rules And Regulations Pertaining To The Administration And Enforcement Of The Pesticide Applicators' Act"

8 CCR 1203-2, Parts 1, 2, 4, 5, 8, 9, 10, 12, and 15

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: October 18, 2023
TIME: 10:30 a.m.
LOCATION: This hearing will be held via Zoom
CALL INFORMATION: 1-719-359-4580
Meeting ID: 876 4469 3347
Passcode: 597153

In order to maintain a proper hearing record you are encouraged to pre-register by completing this Google form. If you do not have access to Google you may send your name and telephone number to Hollis.Glenn@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of these Rules is to incorporate new federal certification and training requirements pursuant to 40 C.F.R. Part 171, to update the Rules consistent with requirements in Senate Bill 23-192 ("SB23-192"), and to clarify existing Rule requirements. Specifically, the revisions to Parts 1, 2, 4, 5, 8, 9, 10, 12 and 15.

The statutory authority for these rules is §§ 35-10-112(1)(e) and (f), C.R.S., and §§ 35-10-118(2)(a) – (d), (3)(a) – (c), (4), (5) and (9), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Hollis.Glenn@state.co.us. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 720-560-6286. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

DEPARTMENT OF AGRICULTURE

Plant Industry Division

RULES AND REGULATIONS PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE PESTICIDE APPLICATORS' ACT

8 CCR 1203-2

Part 1. Construction of Terms, Definitions and Incorporations by Reference.

1.01. As used in these Rules, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa. All terms used in these Rules shall have the meaning set forth for such terms in the Act.

1.02. As used in these Rules, unless the context otherwise requires:

(a) "abut" means to join; to be contiguous, as where no other land, road, or street intervenes; "abut" includes two property sites that would otherwise be considered abutting, but for the fact that such sites are separated by an alley. ~~As used herein, "alley" means a passage way within a block set apart for public use, vehicular travel, and local convenience to provide a secondary means of access to the rear or side of abutting lots or buildings.~~ As used herein, "alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban areas and not intended for the purpose of through vehicular traffic. As used herein, "vehicle" shall have the meaning set forth at § 42-1-102(112), C.R.S.

(b) "category" shall include any sub-category thereof.

(c) "contiguous dwelling unit" means a dwelling unit that is contiguous with another dwelling unit, both of which units are owned, managed, leased, or subleased by the same landlord.

(d) "dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a tenant.

(e) "engaged in the business of applying pesticides for hire" means: the evaluation of pest problems; the recommendation of pest controls and evaluation of results; the mixing, loading or application of pesticides; and/or the soliciting, advertising, offering or contracting to do any of the above, in return for money or anything of value, including goods or services. Notwithstanding anything to the contrary in the foregoing, the rendering of consultation services by an individual in evaluating pest problems, recommending pest controls and/or evaluating results, shall not be deemed to constitute the application of pesticides for hire, if said individual is not affiliated with, or soliciting business for, any person or business entity which performs the mixing, loading or application of pesticides.

(f) "in the possession of" means in the physical possession of the applicator or in a location at the site of the application, such as a service vehicle, that is readily accessible to the applicator.

(g) "fumigant" means any substance which by itself or in combination with other substances emits or liberates a gas or gases, fumes or vapors, and which gas or gases, fumes or

vapors when liberated and used will destroy vermin, rodents, insects, and other pests, but are usually lethal, poisonous, noxious, or dangerous to human life.

(h) "landlord" means the owner, manager, lessor, or sublessor of a residential premises.

(i) "pasture" means land which is managed primarily for the production of forage for domestic livestock. Pasture typically receives intensive renovation and/or cultural treatments, such as tillage, fertilization, mowing, irrigation and weed control.

(j) "proof of medical justification" means a statement signed by a physician licensed to practice medicine in Colorado pursuant to Article 240 of Title 12, C.R.S. which states

I certify that the individual named above is a patient of mine and should be placed on the list of pesticide sensitive individuals. This individual has a documented sensitivity to certain pesticides and should not be exposed to them because of the reason(s) described below:

(k) "property damage" includes, but is not limited to, injury to domestic animals, livestock and economically important insects.

(l) "ready to use pesticide" means, any pesticide that requires no mixing or loading of a pesticide into a service container or other application device; such as but not limited to: aerosols and pre-mixed formulations in the original container.

(m) "structure" means any building, regardless of its design or the type of material used in its construction, whether public or private, vacant or occupied, the foundation thereof, and the adjacent outside areas, and shall also include but shall not be limited to warehouses, trucks, boxcars, boats, airplanes, other vehicles, or the contents thereof, and fumigation vaults.

(n) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(o) "use" ~~means any and all aspects of the handling of pesticides from the time a pesticide container is opened until disposal of the pesticide container, including without limitation, the mixing, loading, application, spill control, and disposal of a pesticide or its container.~~ has the same meaning set forth in § 35-10-103(18), C.R.S.

(p) "to use any pesticide in a manner inconsistent with labeling directions or requirements" includes, but is not limited to, for termiticides only, the use of a termiticide at any concentration less than that stated on the labeling.

(q) "agricultural commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

(r) "device" means any device for which licensure as a commercial applicator is required pursuant to § 35-10-118(9.5), C.R.S. For purposes of these Rules, use of a pesticide includes the use of any such device by a commercial applicator.

1.03. Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference in these Rules is available for public inspection during regular business hours. This incorporated material may be obtained at a

reasonable charge or examined by contacting the Pesticide Section Chief, Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at:

14 C.F.R. Part 137 (2017): https://www.ecfr.gov/cgi-bin/text-idx?SID=78202a2b282637d0353bef1963d3eb97&mc=true&node=pt14.3.137&rgn=div5

7 C.F.R. Part 110 (2017): https://www.ecfr.gov/cgi-bin/text-idx?SID=341d0f40e8a82f23d37560d37f1d3795&mc=true&node=pt7.3.110&rgn=div5

40 C.F.R. § 156.10(h) (2017): https://www.ecfr.gov/cgi-bin/text-idx?SID=0bf63629a0295f907ad146fa19191798&mc=true&node=se40.26.156_110&rgn=div8

29 C.F.R. § 1910.1200 (2017): https://www.ecfr.gov/cgi-bin/text-idx?SID=86491cb903d67e9bba95d83941202d06&mc=true&node=se29.6.1910_11200&rgn=div8

40 C.F.R. PART 172 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXTIDX?SID=6AC65677C44BBA253A0D63B16ED45E72&MC=TRUE&NODE=PT40.26.172&RGN=DIV5

40 C.F.R. PART 180 (2017: HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXTIDX?SID=0EEE3CBC0A72651B5B0BF97FD64ABD54&MC=TRUE&NODE=PT40.26.180&RGN=DIV5

40 C.F.R. § 152.25 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXTIDX?SID=0EEE3CBC0A72651B5B0BF97FD64ABD54&MC=TRUE&NODE=PT40.26.152&RGN=DIV5 #SE40.26.152_125

40 C.F.R. §§ 171.103(c) , 171.103(d), 171.105(a), AND 171.201(d) (2017): https://ecfr.io/Title-40/pt40.26.171#se40.26.171_1103

40 C.F.R. § 170.3 (2017): https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170/subpart-A/section-170.3

Part 2. The Licensing System.
Subpart A Commercial Applicators

2.01. A person engaged in the business of applying pesticides must be licensed as a commercial applicator under the Act. To be licensed or to renew a license as a commercial applicator, any designated qualified supervisor(s) must be licensed in good standing in the category for which a commercial applicator's license is sought.

2.02. A person not engaged in the business of applying pesticides is not required to be licensed as a commercial applicator under the Act. For example, a person who evaluates and/or recommends pest controls while not engaging in the business of applying pesticides or working for a person who engages in the business of applying pesticides is not required to be licensed under the Act.

2.03. Each applicant for a license shall submit a signed, complete, accurate, and legible application, on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the business, the name under which the business will operate (the doing business as name), the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed or designated by the business, and any other information required on the form.

2.04. In addition to the application form described above, each applicant for a license or applicant for renewal of a license, shall submit the license fee set by the Commissioner. If the license fee does not accompany the application, the application for license or renewal of a license may be denied.

2.05. Each person applying as a corporation or other entity shall submit a certificate of good standing from the Secretary of State.

2.06. Each applicant shall submit to the Commissioner the name under which the business will operate. If the licensee operates under more than one name, each such name shall be listed with the Commissioner.

2.07. Beginning with license year 1994, the annual license fee for commercial applicators shall be $350.00.

2.08. Each applicant for renewal of a license shall annually submit a signed, complete, accurate, and legible application on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the business, the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed by the business, and any other information required on the form.

2.09. Each applicant for a license shall provide evidence of liability insurance to the Commissioner.

2.10. Each applicant for renewal of a license in all categories shall have on file at the time of submission of an application for renewal of a license evidence of liability insurance which is in force at the time of application.

2.11. Each commercial applicator shall have on file with the Commissioner evidence of liability insurance at the time any pesticide application is performed.

2.12. Adequate Supervision:

(a) A licensee must have at least one qualified supervisor for every fifteen (15) technicians, of which no more than eight (8) may be unlicensed technicians. For purposes of the provision, the term “unlicensed technician” means a technician who does not have a certified operator license.

(b) A responsible qualified supervisor must be available while any technician under their supervision is using a pesticide. For purposes of this provision, the term “available” means able to communicate verbally with the technician and the Department and to respond appropriately to any emergency.

(c) A qualified supervisor may act in a supervisory capacity for one or more commercial applicator businesses at any given time, but only for the licensure category(ies) the qualified supervisor holds.

(d) A qualified supervisor may supervise one or more technicians employed by multiple commercial applicator businesses, so long as the aggregate number of technicians supervised from among those commercial applicator businesses does not exceed 15 technicians at any one point.

2.13. A commercial applicator who conducts business at two or more business locations shall obtain a license for each location at which it employs one or more permanent employees engaged in the application of pesticides for hire. For purposes of this paragraph, “business locations” means any physical location at or through which the functional operations of business regularly occur,

including, but not limited to, financial transactions, arrangement of contracts, or assignment of work, and excluding buildings or locations used solely for storage of equipment or supplies or telephone answering services.

2.14. A commercial applicator may not apply pesticides aerially without an endorsement on its license by the Commissioner permitting such applications. In order to obtain such endorsement, the applicant or licensee shall present evidence that at least one pilot employed or to be employed by said applicant, currently holds a commercial agricultural aircraft operator certificate issued by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to 14 C.F.R. Part 137 (2017) (as incorporated herein by reference). If the employment of said pilot or pilots is terminated for any reason, the licensee shall immediately cease aerial application of pesticides unless and until it is in compliance with this Rule.

2.15. A business not engaged in the business of applying pesticides for hire, and not licensed under the Act, may solicit and enter into a written contract which incidentally requires one or more pesticide applications only in accordance with the provisions of this Part 2.15. Examples of such contracts, but not by way of limitation, are maintenance and paving contracts. If such business hires a licensed commercial applicator to perform the pesticide application as a subcontractor, then the primary contractor need not itself be licensed under the Act. If the primary contractor does not hire a licensed commercial applicator to perform such applications, then the primary contractor must obtain a license prior to entering into the primary contract. Entry into any such contract that does not have an express written statement that the contractor will subcontract with a licensed commercial applicator to perform the pesticide application(s) called for in the contract, shall constitute a violation of § 35-10-117(1)(c), C.R.S. Failure to include such a statement in any solicitations, whether oral or written, to enter into such a contract shall constitute a separate violation of § 35-10-117(1)(c), C.R.S.

2.16. A commercial applicator not licensed in a category (“contractor”) may solicit and enter into a written contract with a customer to perform pesticide applications in said category only if the contractor subcontracts with a commercial applicator licensed in said category (“subcontractor”) to perform the pesticide application in that category. In this case, the subcontractor shall be responsible for all aspects of the application. If the contractor hires the subcontractor to perform the pesticide application, then the contractor need not itself be licensed in the category. If the contractor does not hire a subcontractor to perform such applications, then the contractor must obtain a license in said category prior to entering into any contract with a customer for any pesticide application in said category. Entry into any such contract that does not have an express written statement that the contractor will subcontract with a subcontractor licensed to perform the pesticide application(s) called for in the contract, shall constitute a violation of § 35-10-117(1)(c). C.R.S. Failure to include such a statement in any solicitation, whether oral or written, to enter into such a contract shall constitute a separate violation of § 35-10-117(1)(c), C.R.S.

2.17. A commercial applicator licensed in a category (“contractor”) may enter into a contract with a customer to perform pesticide applications in said category. The contractor may subcontract with another commercial applicator licensed in the same category (“subcontractor”) to perform the pesticide application under the primary contract. In this case, both the contractor and subcontractor shall be responsible for all aspects of the application. For example and not by way of limitation: both applicators are required to keep records of the application; both applicators are responsible for any notification required under the act or these Rules; and both applicators are responsible for the proper application of any pesticides.

Subpart B Registered Limited Commercial Applicators and Registered Public Applicators

2.18. Any person who in the course of conducting a business only in or on property owned or leased by the person or the person's employer (“limited commercial applicator”) is engaged in applying restricted use pesticides, and any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision (“public applicator”) which applies restricted use pesticides shall register with the Commissioner.

2.19. An entity which does not apply restricted use pesticides but otherwise qualifies as a limited commercial applicator or a public applicator may register with the Commissioner.

2.20. A limited commercial applicator or public applicator which exclusively applies general use pesticides is not required to register with the Commissioner unless they have so designated in accordance with Part 2.19.

2.21. Any limited commercial applicator or public applicator registered pursuant to the Act and these Rules shall be governed by the Act and these Rules for all pesticide applications including those involving general use pesticides.

2.22. The limited commercial applicator or public applicator shall designate on its application one or more individuals, who are or will be employed by it in the capacity of qualified supervisor, to take the examination for each category and subcategory for which the registration is sought.

2.23. To be registered as a limited commercial applicator or public applicator, the designated qualified supervisor must be licensed in good standing and must meet all qualifications including, but not limited to, the experience and/or educational qualifications set forth in these Rules for each of the categories in which he or she will take the examination. For purposes of this Part 2.23, the term "good standing" includes but is not limited to, the fact that the qualified supervisor's license has not expired pursuant to § 35-10-116(1), C.R.S.

2.24. Each applicant for a registration shall submit a signed, complete, accurate, and legible application, on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the applicant, the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed by the applicant, and any other information required on the form.

2.25. In addition to the application form described above, each applicant for registration shall submit the registration fee set by the Commissioner. If the registration fee does not accompany the application, the application for registration may be denied.

2.26. Each person applying as a corporation or other entity shall submit a certificate of good standing from the Secretary of State.

2.27. The registration required pursuant to the Act shall expire on December 31 of the same year the registration is granted.

2.28. A registered limited commercial applicator or a registered public applicator may not apply pesticides aerially without an endorsement on its registration by the Commissioner permitting such applications. In order to obtain such endorsement, the limited commercial applicator or a public applicator shall present evidence that at least one pilot employed or to be employed by said limited commercial applicator or a public applicator, currently holds a commercial agricultural aircraft operator certificate issued by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to 14 C.F.R. Part 137 (2017) (as incorporated herein by reference). If the employment of said pilot or pilots is terminated for any reason, the limited commercial applicator or a public applicator shall immediately cease aerial application of pesticides unless and until it is in compliance with this Rule.

2.29. A limited commercial entity or a public entity may designate separate sections, divisions, agencies, or their equivalent to be registered.

2.30. Adequate Supervision:

(a) A registered limited commercial applicator or a registered public applicator must have at least one qualified supervisor for every fifteen (15) technicians, of which no more than eight (8) may be unlicensed technicians. For purposes of the provision, the term “unlicensed technician” means a technician who does not have a certified operator license.

(b) A responsible qualified supervisor must be available while any technician under their supervision is using a pesticide. For purposes of this provision, the term “available” means able to communicate verbally with the technician and the Department and to respond appropriately to any emergency.

(c) A qualified supervisor may act in a supervisory capacity for one or more commercial applicator businesses at any given time, but only for the licensure category(ies) the qualified supervisor holds.

(d) A qualified supervisor may supervise one or more technicians employed by multiple commercial applicator businesses, so long as the aggregate number of technicians supervised from among those commercial applicator businesses does not exceed 15 technicians at any one point.

2.31. If before the expiration of a registration, a registered limited commercial applicator or registered public applicator wants to withdraw registration, said applicator may withdraw from registration. Notice of withdrawal must be in writing and is not effective until 10 days from receipt by the Commissioner. If before the original expiration of a registration the applicator wants to be registered, the applicator must submit a new application and submit a new registration fee.

Subpart C Qualified supervisors and certified operators

2.32. A person working for a person who is or should be licensed as a commercial applicator, registered limited commercial applicator, or registered public applicator and who without supervision, evaluates pest problems, or recommends pest controls using pesticides, or uses any pesticide, or sells application services, or supervises others in any of these functions must be licensed as a qualified supervisor.

2.33. A person who applies any restricted use pesticide without the on-site supervision of a qualified supervisor must be licensed as a certified operator.

2.34. Each qualified supervisor and certified operator applying for a license or the renewal of a license must be 18 years of age and shall submit an application on a form provided by the Commissioner prior to the date of expiration of any current license which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, the name, address, telephone number, date of birth, and license or registration number of his or her employer, if any, and any other information required on the form.

2.35. The Commissioner may require verification of any fact, including but not limited to, any experience or education claimed on any application, and may investigate the truthfulness and accuracy of any and all information submitted by an applicant.

2.36. Upon a showing of exceptional circumstances by an applicant, the Commissioner may waive part of the experience requirements specified in these Rules. The Commissioner may accept, with sufficient verification, valid relevant field experience obtained in this state or any other state.

2.37. Each applicant for license as a qualified supervisor or certified operator, shall take and pass a general examination and any examinations required for the category for which the applicant has applied.

2.38. Repealed

2.39. Except as provided in Part 2.45 of these Rules, each applicant for a license as a qualified supervisor or certified operator shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for examination as a qualified supervisor or certified operator or any fee for licensure as a commercial applicator.

2.40. The qualified supervisor(s) employed by a licensee shall be responsible for the complete supervision of all pest control recommendations, soliciting, mixing, loading, and application of pesticides for the licensee in the licensure category(ies) the qualified supervisor(s) hold(s).

2.41. The anniversary date of a qualified supervisor's license or certified operator's license shall be the birth date of the licensee.

2.42. Both qualified supervisors and certified operators will be licensed by category and must take and pass both a general exam and a category specific exam.

2.43. In order for a licensed qualified supervisor or licensed certified operator to become licensed in additional categories, the applicant must take and pass the examination in the new category.

2.44. If a qualified supervisor possesses all of the qualifications for licensure as a qualified supervisor in an additional category for which such person is not licensed, except for the required experience, such person shall be licensed as a certified operator in such additional category without payment of the application fee for the certified operator's license.

2.45. If a licensed qualified supervisor or licensed certified operator applies for licensure in an additional category, said qualified supervisor or certified operator shall not be required to pay an additional application fee for licensure in a new category. The applicant shall be required to pay an examination fee.

2.46. Any category added after the qualified supervisor or certified operator is originally licensed or renewed shall expire on the date of expiration of the original license.

2.47. In order to qualify for renewal of a license, any licensed qualified supervisor or licensed certified operator must either take and pass the general exam and any category specific exams for his category or complete any continuing education required pursuant to Part 4 of these Rules. Any renewal of a license shall be determined on a category basis. Any license that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the Commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

2.48. An individual certified or licensed by another jurisdiction as a commercial pesticide applicator may obtain a certified operator license in Colorado without passing any examination, but only for the unexpired term of the certification or license issued by such other jurisdiction. Application for such licensure shall require proof of current certification or licensure in good standing in the other jurisdiction and payment of an application fee pursuant to Part 2.39. Any application for licensure pursuant to this Part 2.48 may be denied for any reason other than passage of any exam. If issued, said license shall expire on the expiration date of the certification or license issued by the other jurisdiction. Upon the expiration of the license issued pursuant to this Part 2.48, the individual may renew the certification or license issued by the other jurisdiction and re-apply to become a certified operator in Colorado as permitted by this Part 2.48, or apply for a license in

Colorado and satisfy all requirements therefore, including, but not limited to, taking and passing each examination applicable to such licensure.

Subpart D Private Applicators

2.49. Any person who uses or supervises the use of a restricted use pesticide for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, if the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person must be a licensed private applicator. The holder of a private applicator license is only authorized to use restricted pesticides for the purpose of producing an agricultural commodity as defined in Part 1.02~~(m)~~(q).

2.50. Each applicant for a private applicator license or renewal of a license must be 18 years of age and shall submit an application on a form provided by the Commissioner, prior to the date of expiration of any current license, which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, address, telephone number, date of birth, photocopy of their identification, and any other information required on the form.

2.51. The Commissioner may require verification of any fact, including but not limited to, type of agricultural commodity production claimed on any application, and may investigate the truthfulness and accuracy of any and all information submitted by an applicant.

2.52. Each applicant for a private applicator license shall take and pass an examination.

2.53. Each applicant for a private applicator license shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for examination as a private applicator.

2.54. A licensed private applicator shall be responsible for the on-site supervision of any unlicensed ~~person~~ private applicator working under his or her direction, who mixes, loads, or applies a restricted use pesticide, for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer. For the purposes of this Part 2.54, supervision of any unlicensed person working "under his or her direction" shall mean work performed by an unlicensed individual acting under the instruction and control of a licensed private applicator~~, even if the licensed private applicator is not physically present at the work site at the time the work is performed~~ where that unlicensed individual has met all training, qualifications, and use-specific condition requirements in accordance with 40 C.F.R. § 171.201(b) - (d) (2017) (as incorporated herein by reference) prior to the unlicensed private applicator using a restricted use pesticide under the on-site supervision of a licensed private applicator.

2.55. The anniversary date of a private applicator license shall be the birth date of the licensee.

2.56. In order for a licensed private applicator to become licensed as a qualified supervisor or certified operator, the applicant must take and pass both a general exam and a category specific exam and meet any requirements outlined in Part 2, Subpart C, of these Rules.

2.57. If a licensed private applicator applies for licensure as a qualified supervisor or certified operator, the private applicator shall be required to pay an additional examination fee and application fee for licensure.

2.58. In order to qualify for renewal of a license, a licensed private applicator must either take and pass the private applicator exam or complete any continuing education required pursuant to Part 4 of these Rules. A license that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the Commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

2.59. An individual certified or licensed by another jurisdiction outside Colorado as a private applicator may obtain a Colorado private applicator license without passing any examination, but only for the unexpired term of the certification or license issued by such other jurisdiction. Application for such licensure shall require proof of current certification or licensure in good standing in the other jurisdiction and payment of an application fee pursuant to Part 2.53. Said license shall expire on the expiration date of the certification or license issued by the other jurisdiction. Upon the expiration of the license issued pursuant to this Part 2.59, the individual may renew the certification or license issued by the other jurisdiction and re-apply to become a private applicator in Colorado as permitted by this Part 2.59, or apply for a license in Colorado and satisfy all requirements therefore, including, but not limited to, taking and passing an examination applicable to such licensure.

2.60. Private pesticide applicator licensure classification: Category 401, Private Pesticide Applicator Pest Control, is for the application of restricted use pesticides for the purpose of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, when the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

2.61. Private applicators making aerial, structural, or soil / non-soil fumigant applications must hold one or more of the following categories that correspond to the application being made in addition to the category 401, Private Pesticide Applicator license:

(a) Category 114: Aerial Pest Control: The application of pesticides by unmanned aerial vehicle (UAV), fixed or rotary wing aircraft.

(1) The Aerial Pest Control category may be obtained by successfully passing an approved Aerial Pest Control Certification examination offered by the Colorado Department of Agriculture or any state with an approved Environmental Protection Agency Certification Plan. Proof of a passing score obtained within the last 12 months with exam results 70% or better must be provided to the Department with the application.

(2) A reciprocal Aerial Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.

(3) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Aerial Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the licensure category and the applicator will be required to retest.

(b) Category 309: Soil / Non-Soil Fumigation Pest Control: For the use of a fumigant to control pests in soil or non-soil sites not otherwise addressed in category 303, Structural Fumigation Pest Control.

(1) The Soil / Non-Soil Fumigation Pest Control category may be obtained by successfully passing the Soil / Non-Soil Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.

(2) A reciprocal Soil / Non-Soil Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.

(3) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Soil / Non-Soil Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.

(4) The Soil / Non-Soil Fumigation Pest Control category does not allow application of fumigants to control pests in structures as described in category 303, Structural Fumigation Pest Control. To apply a fumigant in a structure, a person holding a category 401, Private Pesticide Applicator license, must also hold category 303.

Subpart E Licensure Actions, Suspension, Denial, Revocation

~~2.61.~~2.62. Any of the following actions shall constitute grounds for the suspension, restriction, refusal to renew, denial, or revocation of a license or certification, whether alone or in conjunction with violations of any provision of the act or of any other provision of these Rules:

(a) The application of pesticides in a negligent or willful manner which creates, either by pesticide residue or by direct damage, a hazard to property, which shall include without limitation, crops, ornamental plants, and animals (including economically important insects).

(b) The application of pesticides in a negligent or willful manner which endangers human health.

(c) The creation of a situation from improper handling of pesticides, including spillage, leakage, vapors or disposal, which constitutes a hazard to the health, welfare or safety of any person, the general public, any animal or animals (including economically important insects), any crops, any ornamental plants, or the environment.

Part 3. Examination.

3.01. The Commissioner, or his or her designated administrator, shall administer a general examination and/or an examination in each category established by these Rules. Each examination must meet all core standards for all categories in accordance with 40 C.F.R. §§ 171.103(c), 171.103(d), and 171.105(a) (as incorporated herein by reference). Each examination is for the purpose of licensing as a qualified supervisor, certified operator, or private applicator. An individual may take such examinations for the purpose of obtaining a license.

3.02. Each applicant for examination shall file an application for examination on a form provided by the Commissioner and shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for application for licensure as a qualified supervisor, certified operator, or private applicator or any fee for licensure as a commercial applicator.

3.03. Each applicant shall be required to obtain the grade designated as passing on each section of the examination(s) under which he or she wishes to qualify. All examinations shall be graded uniformly.

3.04. Each applicant for examination shall complete an identification form, provided by the Commissioner, for the Commissioner's use in identifying persons who take the examinations. The information on the identification form shall consist of that which is reasonably necessary or appropriate for ensuring the integrity of the examination process, such as the physical description of the applicant.

3.05. Examinations shall be graded without reference to the application or personal identification forms which have been completed by the applicant.

3.06. The Commissioner shall keep an applicant's test results on file for a period of one year from the date of examination. Such results may be used by an applicant for licensing during that period of time. If an applicant fails to complete the licensing process within one year of the examination date, he or she shall be required to take new examinations in all applicable categories in which he or she wishes to be licensed.

3.07. The Commissioner may furnish, for a fee, study guides for the use of persons preparing for the examinations given under the Act. The fees for this material shall be sufficient to cover the cost of printing and postage.

3.08. Examination security provisions:

(a) No applicant or licensee testing in any qualified supervisor or certified operator licensure category shall use any outside information not provided by the Commissioner or his designee while taking a closed book examination, remove any examination question or answer sheets from the room where the examination is given, nor shall any applicant or licensee cause any examination question or answer to be disseminated to any person not employed by the Commissioner by any means whatsoever.

(b) No applicant or licensee testing for a private applicator license, or person proctoring a private applicator test session, shall cause any examination question or answer to be disseminated to any person not employed by the Commissioner by any means whatsoever. No person other than the applicant or licensee may complete the private applicator examination form.

Part 4. Continuing Education Requirements.

Subpart A General Continuing Education Requirements for Qualified Supervisor and Certified Operator

4.01. In order to renew a license without examination, each qualified supervisor and each certified operator must obtain the following credits prior to the expiration of his license:

(a) 2 credits in the subject area of applicable state, federal, and local laws and regulations;

(b) 1 credit in the subject area of pesticides and their families;

(c) 1 credit in the subject area of applicator safety;

(d) 1 credit in the subject area of public safety;

(e) 1 credit in the subject area of environmental protection;

(f) 1 credit in the subject area of use of pesticides;

(g) 1 credit for each licensed category in the subject area of pest management except for those categories described in Part 4.01(h); and

(h) 2 credits for each of the following licensed categories: residential/commercial pest control, turf pest control and ornamental pest control.

4.02. In order for a qualified supervisor or a certified operator attending a course to receive relicensing or continuing education credit:

(a) the course must be approved in advance by the Commissioner;

(b) requests for approval must be in submitted by the course sponsor to the Commissioner on a form provided by the Commissioner;

(c) requests for approval must be submitted no less than thirty days prior to the course; and

(d) requests for approval must include:

(1) The proposed agenda, with the length of time for each session and a synopsis of the topics to be addressed in each course for which credit is being requested;

(2) The identity of all speakers for each pertinent course. Upon request, the course sponsor must provide the Commissioner with speaker credentials confirming licensure or expertise in the subject matter for which the speaker will provide training. The Commissioner may deny approval of a speaker if the credentials or experience does not relate to the subject matter the speaker will teach; and

(3) An explanation of the process the course sponsor will use to confirm the identity of each course attendee.

(e) Core category recertification sessions, as indicated in Subparts C – H of this Part 4, must be no less than 30 minutes in length. Pest Management recertification sessions, as indicated in Subpart I of this Part 4, must be no less than 60 minutes in length. Multiple sessions may be grouped sequentially to meet the minimum time requirements if the course sponsor can show attendance can be tracked across grouped sessions.

(f) Attendance at approved recertification courses must be open to any person holding a Colorado pesticide applicator license, subject to space limitations.

4.03. If the Commissioner receives a request for continuing education approval at least sixty days prior to the course date, the Commissioner will notify applicators of the approval for continuing education credits. The Commissioner will not provide notification of such approval if the request for its approval was received less than sixty days prior to the course.

4.04. The list of those attending each approved course shall be sent by the sponsor to the Commissioner no later than 7 days after the conclusion of the course. The sponsor must provide each licensed attendee confirmation of attendance of the course no more than 7 days after the conclusion of the course. It is the attendee's responsibility to confirm that his or her name appears on the attendance list for each course or session attended. The course sponsor must provide attendance confirmation to the Commissioner in writing or electronically, using a form provided by the Commissioner or in a format preapproved by the Commissioner.

4.05. A course will be approved for continuing education credit if, in the opinion of the Commissioner, it covers at least one topic from the following subject areas adequately to justify the approval for credit. (Subject areas and subtopics are listed in Subparts C - I of this Part 4.) Failure to meet any required recertification submission provision in this Part 4 may be grounds for course denial or future course denial.

Subpart B General Continuing Education Requirements For Private Applicators

4.06. In order to renew a license without examination, each private applicator must obtain the following credits prior to the expiration of his or her license:

(a) 2 credits in the subject area of applicable state, federal and local laws and regulations;

(b) 1 credit in the subject area of pesticides and their families;

(c) 1 credit in the subject area of applicator safety;

(d) 1 credit in the subject area of public safety;

(e) 1 credit in the subject area of environmental protection; and

(f) 1 credit in the subject area of use of pesticides.

4.07. In order for a private applicator attending a course to receive relicensing or continuing education credit:

(a) the course must be approved in advance by the Commissioner;

(b) requests for approval must be submitted by the course sponsor to the Commissioner on a form provided by the Commissioner;

(c) requests for approval must be submitted no less than thirty days prior to the course; and

(d) requests for approval must include:

(1) The proposed agenda, with the length of time for each session and a synopsis of the topics to be addressed in each course for which credit is being requested;

(2) The identity of all speakers for each pertinent course. Upon request, the course sponsor must provide the Commissioner with speaker credentials confirming licensure or expertise in the subject matter for which the speaker will provide training. The Commissioner may deny approval of a speaker if the credentials or experience do not relate to the subject matter the speaker will teach; and

(3) An explanation of the process the course sponsor will use to confirm the identity of each course attendee.

(e) Core category recertification sessions, as indicated in Subparts C – H of this Part 4, must be no less than 30 minutes in length. Multiple sessions may be grouped sequentially to meet the minimum time requirements if the course sponsor can show attendance can be tracked across grouped sessions.

(f) Attendance at approved recertification courses must be open to any person holding a Colorado pesticide applicator license, subject to space limitations.

4.08. If the Commissioner receives a request for continuing education approval at least sixty days prior to the course date, the Commissioner will notify applicators of the approval for continuing education credits. The Commissioner will not provide notification of such course approval if the request for its approval was received less than sixty days prior to the course.

4.09. The list of those attending each approved course shall be sent by the sponsor to the Commissioner no later than 7 days after the conclusion of the course. The sponsor must provide each licensed attendee confirmation of attendance of the course no more than 7 days after the

conclusion of the course. It is the attendee's responsibility to confirm that his or her name appears on the attendance list for each course or session attended. The course sponsor must provide attendance confirmation to the Commissioner in writing or electronically, using a form provided by the Commissioner or in a format preapproved by the Commissioner.

4.10. A course will be approved for continuing education credit if, in the opinion of the Commissioner, it covers at least one topic from the following subject areas adequately to justify the approval for credit. (Subject areas and subtopics are listed in Subparts C – H of this Part 4.) Failure to meet any required recertification submission provision in this Part 4 may be grounds for course denial or future course denial.

Subpart C Applicable State, Federal, and Local Laws and Regulations

4.11. State, federal and local regulations dealing with: pesticides, application, disposal, notification, transportation, registration, uses, licensing, worker protection, endangered species, storage, residues and tolerances, emergency planning and right to know, advertising, record keeping, business practices, insurance, training standards, supervision, responsibility of supervisors of non-certified applicators, agricultural chemicals and groundwater, or consumer protection.

4.12. Compliance problems/actions, analysis of most frequent violations, and discussions of specific problems and actions.

Subpart D Pesticides and Their Families

4.13. Pesticide label and labeling including: label requirements, label terminology, and effect of failure to comply with label requirements.

4.14. Pesticides in general including: families and types, mode of action, and other properties.

4.15. Formulation of pesticides: types, properties, advantages, limitations, toxicity, dilution, mixing, and uses.

4.16. Semiochemicals for pest detection and control.

4.17. Adjuvants and additives.

4.18. Specific pesticide characteristics and concepts including: compatibility, synergism, persistence, environmental fate, resistance, mode of action (contact, systemic, etc.), mobility, leachability, potential for biological concentration and/or accumulation, volatility, solubility, inert ingredients and/or carriers, and phytotoxicity.

4.19. National trends on pesticide problems.

Subpart E Applicator Safety

4.20. Safe use of pesticides by the applicator including: label requirements, transportation, mixing, loading, disposal, equipment cleanup, spill management, storage, application, and precautions to prevent exposure and injury.

4.21. Applicator protection including selection, care, and maintenance of protective clothing and safety equipment.

4.22. Human health effects including: acute and chronic toxicity, hazard determination, routes of exposure, symptoms of pesticide poisoning, and allergies.

4.23. First aid and emergency actions for pesticide exposure and use related injuries.

4.24. Reference sources pertinent to applicator safety including: Material Safety Data Sheet(s) (MSDS), telephone hotlines, emergency procedures, and label requirements.

4.25. Major label revisions and national trends and updates relevant to applicator safety.

4.26. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

Subpart F Public Safety

4.27. Safe use of pesticides by the applicator including: label requirements, transportation, mixing, loading, disposal, equipment cleanup, spill management, storage, application, and precautions to prevent exposure and injury.

4.28. Human health effects including: acute and chronic toxicity, hazard determination, routes of exposure, symptoms of pesticide poisoning, and allergies.

4.29. Reference sources pertinent to public safety including: Material Safety Data Sheet (s) (MSDS), telephone hotlines, emergency procedures, and label requirements.

4.30. Major label revisions and national trends and updates relevant to public safety.

4.31. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

4.32. Public education about pesticides and pesticide application, public relations, communication, professionalism, and trouble shooting.

4.33. Pesticide sensitivities, allergies, and phobias including chemophobia and entomophobia.

Subpart G Environmental protection

4.34. Precautions to protect the environment and minimize the effects of pest management on it, including: identification of meteorological and climatic factors affecting application (drift, runoff, etc.); identification of terrain, soil, substrata influence on possible surface and ground water contamination; recognition of sensitive areas and organisms that could be affected by application, drift and runoff such as endangered species, wildlife, ornamentals, beneficial insects, humans, and domestic animals; identification of methods of spill prevention, control, and cleanup; observation of preharvest intervals; timing of applications for specific pest controls; and pesticide storage and transportation.

4.35. Major label revisions and national trends and updates relevant to environmental protection.

4.36. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

Subpart H Use

4.37. Mixing and loading including: proper mixing and loading techniques, label requirements, closed systems, adjuvants for drift control and other purposes, measuring, pH of water and other factors to consider, procedures for spill prevention, control and clean up, site location and construction, prevention of contamination, and security.

4.38. Application including: proper application techniques, techniques to control off target movement, new application techniques, procedures for spill prevention, control and clean up, label requirements, pest identification, and effective control.

4.39. Equipment including: calibration, selection of correct equipment for the job, maintenance and care, clean up, new equipment.

4.40. Storage and disposal including: bulk storage, label requirements, site requirements such as ventilation, containment, procedures for spill prevention, control and clean up, disposal of containers, rinsate, excess material, security, fire prevention, posting, temperature, and product separation to prevent cross contamination.

4.41. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

4.42. Major label revisions and national trends and updates relevant to pesticide use.

4.43. Practical demonstration of use methods and techniques.

Subpart I Pest Management

4.44. Identification and biology including: principles of host and pest identification and recognition of such organisms, principles of site/habitat identification, damage and/or symptoms caused by pests, recognition of beneficial organisms, understanding host, pest and beneficial life cycles and susceptible stages, and evaluate environmental conditions and ecology on host and pest biology.

4.45. Pest management criteria including: determining economic or aesthetic threshold levels, consideration of environmental impact of control methods, selection of control method, post-treatment evaluation, ability to integrate various pest management methods, comparative effectiveness of management methods and techniques, sampling and survey techniques, host and pest resistance, effects of control methods on host and off target organisms, timing of control alternatives, and pest management history.

4.46. Chemical control methods and practices including: select material, formulation, and/or equipment, determine dosage of selected control, selection of proper pesticides and adjuvants for a particular job, and timing of pesticide application.

4.47. Alternative control methods and practices including: mechanical, biological, cultural, and physical methods, and timing of control methods.

4.48. References for decision making for pest management.

4.49. Major label revisions, evolution of pest management, and national trends and updates relevant to pest management.

Part 5. Technician Training.

Subpart A General

5.01. Definitions. For purposes of this Part 5 unless the context otherwise requires:

(a) “Applicator technician” means a technician whose job includes the use of pesticides;

(b) “Experienced technician” means a technician who has been trained and has the following minimum experience within the past 3 years: for applicator technicians doing structural applications, 6 months of experience including time in training, for applicator technicians doing agricultural, turf, ornamental or turf and ornamental applications, 1 season of experience including time in training, and for sales technicians, 1 season of sales experience;

(1) “New hire experienced technician” means any technician who has met the experience requirements, outlined in Part 5.01(b), within the last 3 years, but is a new employee of a commercial applicator, registered limited commercial applicator, or registered public applicator.

(2) "On-going experienced applicator technician" means an individual who has met the definition of an experienced technician and continues to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator.

(c) "Sales technician" means a technician whose sole job is selling application services; and

(d) "Selling application services" means the sale of a pesticide application. Selling application services does not include the sale of an evaluation service, inspection service, or recommendation service. To qualify as a sale of an application service, the seller must make an evaluation of pest problems or a recommendation of pest controls using pesticides. A seller does not make an evaluation of pest problems or a recommendation of pest controls using pesticides if the seller answers questions from a customer using an answer sheet prepared by a licensed qualified supervisor.

(e) "Flagger technician" means an individual employed and compensated by the applicator who designates, with a flag or any other identification, the alignment of a pesticide application during the application of pesticides at that site.

5.02. Scope of Part 5.

(a) A person will not be considered a technician for purposes of these Rules if said person uses, sells, or recommends a general use pesticide while under the on-site supervision of a qualified supervisor.

(b) A person who evaluates any pest problem while under the on-site supervision of a qualified supervisor will not be considered a technician.

(c) Use or sales of restricted use pesticides by a technician:

(1) A person must be a trained technician ~~or must be training to be a technician~~ if said person uses a restricted use pesticide while under the on-site supervision of a qualified supervisor.

(2) A person must be training to be a technician to sell or recommend a restricted use pesticide while under the on-site supervision of a qualified supervisor.

(3) A person must be a trained technician to sell or recommend a restricted use pesticide while under the supervision of a qualified supervisor.

(4) All requirements for direct supervision at 40 C.F.R. § 171.201 (2017) (as incorporated herein by reference) must be met prior to a technician using a restricted use pesticide under the on-site supervision of a qualified supervisor.

(d) A person must be a technician or must be training to be a technician if said person uses, sells, or recommends a general use pesticide while on the job with a certified operator or experienced technician.

(e) A person may not use, sell, or recommend, general use pesticides unaccompanied by a qualified supervisor, certified operator, or experienced technician without completing the training required by these Rules.

(f) For the purposes of determining if a person is experienced and/or trained, upon a showing of exceptional circumstances by a commercial applicator, the Commissioner may waive all or part of the experience and training requirements specified in these

Rules. The Commissioner may accept, with sufficient verification, valid relevant field experience and training obtained from sources other than the commercial applicator in this state or any other state so long as safety is not compromised and the person has the necessary pertinent application skills.

(g) The amount of time given to each topic covered by these Rules is discretionary with the trainer. However, the technician's training must be relevant to each technician's job duties.

(h) Each commercial, registered limited commercial, or registered public applicator licensed or registered in any category shall record the training provided to each technician on a form or forms provided by the Commissioner. Any such form(s) must be completed in full in order to comply with this Part 5.02(h).

(i) Each commercial, registered limited commercial, or registered public applicator licensed or registered in any category may give a written examination to trained technicians to determine the comprehension of subjects covered by the training. However, said examination shall not in any manner substitute for any of the training required by these Rules.

(j) This Part 5 shall not apply to limited commercial applicator and public applicators not registered with the Department pursuant to Section 35-10-109, C.R.S., which are regulated by Part 16 of these Rules.

(k) All technician training conducted under this Part 5 and its Subparts must conform with all noncertified applicator training requirements in 40 C.F.R. § 171.201~~(d)~~ (2017) (as incorporated herein by reference).

(l) A commercial, registered limited or registered public applicator must obtain training records to verify that any new-hire experienced technician has met all the training requirements in this Part 5. These records must be maintained as part of the technician's training record in accordance with Part 5.02(m) below.

(m) Each commercial, registered limited commercial, or registered public applicator must maintain the training record(s) as follows~~:~~.

(1) The original training record reflecting all required classroom and on-the-job training hours, in accordance with Part 5 and its subparts for the category being trained in, must be maintained for the entirety of the technician's employment and for three years after the technician's separation from the employer~~;~~.

(2) The on-going training record reflecting all required training hours and topics, in accordance with Part 5 and its subparts for the category being trained in, must be maintained for a minimum of three years from the date training was conducted.

(3) A copy of all training records must be provided to the applicator technician upon request and must be provided to the Commissioner upon request.

Subpart B Agricultural

5.03. Except as otherwise expressly provided in these Rules, each applicator technician and flagger technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in any agricultural category shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(b) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.04. Except as otherwise expressly provided in these Rules, each sales technician working for a commercial applicator licensed in any agricultural category shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 16 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. No more than 8 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety; and

(c) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor.

5.05. Except as otherwise expressly provided in these Rules, each on-going experienced applicator technician, flagger technician, and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in any agricultural category shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in Part 5.03 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.06. Except as otherwise expressly provided in these Rules, each new hire experienced technician and flagger technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in any agricultural category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart C Turf

5.07. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have at a minimum 36 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 4 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.08. Each sales technician working for a commercial applicator licensed in the turf category shall have at a minimum 40 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pesticide label and labeling, and public safety;

(b) At least 8 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety.

5.09. Each technician who acts as both a sales technician and an applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have at a minimum 48 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 16 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.10. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of turf pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in Part 5.09 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.11. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years which training shall cover: use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom and the job site as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart D Ornamental

5.12. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have at a minimum 40 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 8 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.13. Each sales technician working for a commercial applicator licensed in the ornamental category shall have at a minimum 48 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pesticide label and labeling, and public safety;

(b) At least 16 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety.

5.14. Each technician who acts as both a sales technician and as an applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have at a minimum 56 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 24 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. No more than 16 hours of said on the job

training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.15. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of ornamental pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in Part 5.14 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.16. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. Said training shall cover: use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom and the job site as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart E Turf and Ornamental

5.17. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have at a minimum 60 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 12 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 40 hours of which shall be on the job training. At least 16 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. No more than 24 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said

training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.18. Each sales technician working for a commercial applicator licensed in both the turf category and the ornamental category shall have at a minimum 64 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pesticide label and labeling, and public safety;

(b) At least 24 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 32 hours of which shall be on the job training, at least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. No more than 24 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety.

5.19. Each technician who acts as both a sales technician and as an applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have at a minimum 80 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 32 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 40 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. No more than 32 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.20. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have, during each year of employment after the first season of experience, at a minimum, the following on- going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of turf and ornamental pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in Part 5.19 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.21. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom and the job site as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart F Structural

5.22. Each applicator technician and sales technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control shall have at a minimum 160 hours of training:

(a) At least 32 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 120 hours of which shall be on the job training. At least 60 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 year of structural pesticide application experience within the last 2 years. No more than 60 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(d) Successfully complete a written examination prepared and given by the commercial applicator showing overall comprehension of the subject matter of the training.

5.23. Each on-going experienced applicator technician and sales technician continuing to work for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control shall have during each year of employment after the first season of experience, at a minimum, the following on-going training:

(a) 2 hours per month of training which training shall over a period of 6 months include at least 3 hours of classroom-instructional training. 9 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor. Said classroom-instructional training and on the job training shall be conducted by either a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of structural pesticide application experience within the last 2 years. Said training shall cover those areas enumerated in Part 5.22; and

(b) Successfully complete a written examination prepared and given by the commercial applicator showing overall comprehension of the subject matter of the training.

5.24. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control shall have at a minimum 32 hours of training:

(a) At least 16 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(b) At least 16 hours of which shall be the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 year of structural pesticide application experience within the last 2 years which training shall cover: use, equipment and calibration, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

(c) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

5.25. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of outdoor vertebrate pest control, stored commodities treatment, Post-Harvest Potato Pest Control, wood preservation and wood products treatment, or interior plant pest control shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(b) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.26. Each sales technician working for a commercial applicator licensed in the structural categories of outdoor vertebrate pest control, stored commodities treatment, Post-Harvest Potato Pest Control, wood preservation and wood products treatment, or interior plant pest control shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 16 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. No more than 8 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety; and

(c) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor.

5.27. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of outdoor vertebrate pest control, stored commodities treatment, Post-Harvest Potato Pest Control, wood preservation and wood products treatment, or interior plant pest control shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in Part 5.25 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.28. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of outdoor vertebrate pest control, stored commodities treatment, ~~Post-Harvest Potato Pest Control~~post-harvest potato pest control, wood preservation and wood products treatment, or interior plant pest control shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Part 6. Records.

Subpart A Recordkeeping Requirements for Commercial, Registered Limited Commercial and Registered Public Applicators

6.01. Licensed commercial applicators shall maintain accurate and legible office records of each application of pesticides made for hire. Commercial applicators using devices shall maintain records in accordance with Part 15.07 of these Rules.

6.02. Registered limited commercial and registered public applicators shall maintain accurate and legible office records of each application of pesticides.

6.03. Except for device applications as provided in Part 6.01, such records shall include all of the following information:

(a) Name and address of person for whom application was made.

(b) Location where application was made, if different from Part 6.03(a). The location of a field should be fully described. In the case of roadside weed control applications, the record should include the county or state road number and the portion of roadside treated, described by reference to mileage markers or prominent geological features such as road intersections, river or creek crossings, or the like.

(c) Target pest. This means the specific pest for which the application was made. A general term is acceptable only if the pesticide label specifically refers to that exact term (such as “broadleaf weeds”).

(d) Site, crop, commodity or structure treated.

(e) Specific pesticide applied. This shall be accomplished by recording the EPA registration number of the pesticide product. The brand name of the pesticide product and the name and address of its manufacturer may also be included in this record.

(f) Dilution rate. This is the amount of formulated product or active material per unit of volume of carrier specified as such. In the case of a product applied out of the container without mixing, the entry should be “no dilution”, “aerosol”, or “RTU” (ready to use), as applicable.

(g) Application rate. This is the total gallons or pounds of the final tank mix applied per unit of area or volume. In the case of “crack and crevice” structural treatment, the entry should indicate “crack and crevice”. The entry for a livestock application should indicate “dip” or “spray”, as appropriate. In the case of an application of a pesticide labeled “spray until wet,” “spray to runoff,” or the like, the entry should indicate the nature of the application in language consistent with the label directions.

(h) Carrier, if other than water.

(i) Date and time of application. The record shall indicate the time, within at least one-half hour accuracy, when the application was started or stopped. Each applicator's records shall be kept consistently and clearly, in such a manner as to allow ready determination as to whether a noted time indicates the beginning or end of the application. An entry merely stating “A.M.” or “P.M.” is not sufficient to comply with this Rule.

(j) Name and license number of the person who made or supervised the application (i.e., technician, certified operator, qualified supervisor). If a restricted use pesticide application is performed by an applicator technician, the record of application shall include the names of both the technician and the responsible on-site qualified supervisor.

(k) Endangered Species Protection Bulletin for the county and month in which the application was made for any pesticide product used, when required by the label. If there is not an

active Endangered Species Bulletin use limitation for the county and month in which the application was made, no Endangered Species Protection Bulletin is required to be maintained in the applicator's records. For purposes of complying with this Part 6.03(k), a single Endangered Species Bulletin record may be applied to multiple applications that are subject to that Bulletin.

6.04. Any applicator performing wood destroying insect control, for the control of termites, shall keep, in addition to record keeping requirements outlined in Part 6.03 above, the following information:

(a) For all commercial pre-construction treatments, the licensee must maintain records of square footage treated per application site, flow rate of the application equipment, and the start and stop time for the treatment. If a physical barrier is used, the square footage of the physical barrier shall be recorded and a diagram describing the installation shall be provided.

(b) Each post construction termite liquid and bait treatment record shall include:

(1) A diagram, blueprint, or building plat and a description of the structure or structures to be treated, including the following:

(i) Approximate measurements as accurately as practical;

(ii) Areas of known current termite activity;

(iii) Areas of known previous termite activity;

(iv) Areas of known conditions conducive to termite activity;

(v) Areas to be treated and by what means, (i.e.: slab injection, trenching).

(2) A copy of the signed customer contract and any warranty information provided to the customer, including any job specific exclusions, limitations or amendments.

(3) An original or legible copy of the original label for any pesticide used.

(4) The signature of approval on the proposed treatment diagram by a qualified supervisor licensed in the wood destroying organism category who is employed by or associated with the applicator making the proposal.

(5) For termite baiting programs:

(i) The number and locations of baiting and monitoring stations to be installed;

(ii) All service inspections of termite bait stations must be kept as part of that customer's service record and service frequency must be performed as recommended by the manufacturer's label requirements.

Subpart B Recordkeeping Requirements for Private Applicators

6.05. Licensed private applicators shall maintain accurate and legible records of each restricted use pesticide application in accordance with all regulations of the United States Department of Agriculture's federal pesticide recordkeeping requirements set forth in the Code of Federal Regulations at 7 C.F.R. Part 110 (2017) (as incorporated herein by reference). Pursuant to § 35-10-111 of the Act, such records shall be retained for a period of two years from the date of the pesticide application.

Part 7. Business Practices, Equipment Identification, Notices.

7.01. Equipment identification.

(a) For the purposes of subparagraphs (b) and (c) below, the term “company business name” includes any name or trademark registered with the Colorado Secretary of State, any doing business as name as submitted in the licensee’s application, and any company logo that clearly communicates the licensee’s business name.

(b) Commercial applicator equipment identification:

(1) All motor vehicles, trailers, and mobile application equipment while used by or on behalf of any licensee for applying or carrying pesticides shall be identified by displaying thereon, in letters not less than two inches high, the company business name and, in letters not less than one inch high, the city and state of said licensee's place of business. Such lettering on a licensee's equipment shall be clearly legible~~,~~ and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall be identified on both sides of the vehicle. This Part 7.01(b)(1) shall not apply to aircraft, small capacity sprayers with less than a ten-gallon capacity, and application equipment mounted on vehicles marked in accordance with these Rules.

(2) Vehicles with a spray tank holding more than a ten-gallon capacity that due to the size or design of the vehicle do not provide sufficient surface area to comply with the identification requirements outlined in Part 7.01(b)(1) shall be identified by displaying thereon, in letters not less than one inch high, the company business name of said licensee. Such lettering on a licensee's equipment shall be clearly legible~~,~~ and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall, at a minimum, be identified on one side of the vehicle.

(c) Public applicator equipment identification:

(1) Any public applicator registered with the Department shall identify all motor vehicles, trailers, and mobile application equipment while used by or on behalf of such registrant for applying or carrying pesticides by displaying, in letters not less than two inches high, the city or state name, or a logo identifying the registered public entity they represent. Such lettering on a registrant's equipment shall be positioned and maintained so as to be clearly legible~~,~~ and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall be identified on both sides of the vehicle. This Part 7.01(c)(1) shall not apply to aircraft, small capacity sprayers with less than a ten-gallon capacity, and application equipment mounted on vehicles marked in accordance with these Rules.

(2) Vehicles with a spray tank holding more than a ten-gallon capacity that due to the size or design of the vehicle do not provide sufficient surface area to comply with the identification requirements outlined in Part 7.01(c)(1) shall be identified by displaying thereon, in letters not less than one inch high, the city or state name, or logo, identifying which public entity they represent. Such lettering on a registrant's equipment shall be clearly legible~~,~~ and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall, at a minimum, be identified on one side of the vehicle.

7.02. All licensees must inform the Commissioner, in writing, of any change in their address or telephone number.

7.03. Each qualified supervisor or certified operator must notify the Commissioner in writing when he or she begins employment with a commercial, registered limited commercial, or registered public applicator, terminates employment, or when he or she changes branches, divisions, satellite offices or employers. Such notification shall be within 15 days of said employment, termination, or change.

7.04. Each commercial, registered limited commercial, and registered public applicator must notify the Commissioner in writing when a qualified supervisor in its employ terminates employment, or changes branches, divisions or satellite offices, or when adding a qualified supervisor to its staff. Such notification shall be within 15 days of said termination, change, or addition.

7.05 The original product container with labeling or a copy of the pesticide label and any associated labeling for the intended use, for each product in use shall be in the possession of the commercial, registered limited commercial, or registered public applicator employee at the site of application whenever a pesticide application is performed. This Part 7.05 shall not apply to aerial applicators, private applicators, or Endangered Species Protection bulletins referenced on the label.

Part 8. Agricultural Applicators.

8.01. The agricultural classification includes the following categories:

(a) Category 101: Agricultural Insect Control: the application of pesticides to agricultural plants, including applications performed on pastures, croplands and non-crop agricultural lands, to control invertebrate pests, including insects, mites, slugs, snails, and nematodes.

(b) Category 102: Agricultural Plant Disease Control: the application of pesticides to agricultural plants, including applications performed on pastures, croplands and non-crop agricultural lands, to control plant diseases.

(c) Category 103: Agricultural Weed Control: the application of pesticides to agricultural lands, including pastures, croplands and non-crop agricultural lands, to control weeds.

(d) Category 104: Seed Treatment: the application of pesticides to seeds on agricultural establishments as defined at 40 C.F.R. § 170.3 (as incorporated herein by reference) or seed treatment facilities.

(e) Category 105: Livestock Pest Control: the application of pesticides to livestock.

(f) Category 106: Forest Pest Control: the application of pesticides in forests, forest nurseries, forest seed producing areas managed for the production of timber and other forest products or maintained as wood vegetation for such indirect benefits as protection of catchment areas or public recreation, including windbreaks and downed timber. For applications in forested areas within fifty (50) feet of a residential or commercial structure, an applicator must also hold the ornamental pest control category in accordance with Part 9 of these Rules and comply with all of the posting and notification requirements in Section 35-10-112, C.R.S., of the Pesticide Applicators' Act. This additional certification in the ornamental pest control category shall not apply to aerial applicators or ground applications made by federal, state, or local governments on property they own. This category does not apply to pesticide applications made to control vertebrate pests.

(g) Category 107: Rangeland Pest Control: the application of pesticides to land which is not managed for turf, pasture or forest on which the vegetation is predominantly native plant species or introduced species managed as native species such as grasses, grass-like plants, forbs or shrubs. Rangelands include but are not limited to natural grasslands, shrublands, deserts, tundras, and meadows. For applications performed in rangeland areas within fifty (50) feet of a residential or commercial structure, an applicator must also hold the turf pest control category in accordance with Part 9 of these Rules and comply with all of the posting and notification requirements in Section 35-10-112, C.R.S., of the Pesticide Applicators' Act. This additional certification in the turf pest control category shall not apply to aerial applicators or ground applications made by federal, state, or local governments on property they own. This category does not apply to pesticide applications made to control vertebrate pests.

(h) Category 108: Aquatic Pest Control: the application of pesticides to standing or running water when made to control weeds, amphibians, fish and other pests in water, except for pesticide applications which are included in the “Public Health” category, at Part 8.01(j).

(1) Category 113: Metam sodium for root control in sewers: the application of metam sodium in sewers to control roots. For purposes of this sub-category, “sewer” shall mean any artificial conduit for the transmission of wastewater to a wastewater treatment plant.

(i) Category 109: Industrial and Right-of-Way Weed Control: the application of pesticides to maintain roads, sidewalks, trails, paths, utility lines, railways, parking lots, drilling rigs, substations, open irrigation and drainage structures or similar areas and adjacent land within right of ways associated with such areas for the purpose of establishing or maintaining definable cover or bare ground.

(j) Category 110: Public Health Pest Control: ~~the application of pesticides for control of disease vectors, except vertebrates.~~ The application of pesticides for the control of pests having medical or public health importance, except vertebrates. This category applies to non-government commercial applicators who use pesticides for the management and control of pests having public health importance.

(1) Category 110G: Government-Sponsored Public Health Pest Control: The application of restricted use pesticides in government-sponsored public health programs for the control of pests having medical or public health importance.

(k) Category 111: Research and Demonstration: the application of pesticides in the course of conducting field research or demonstration. No license or certification will be issued in this category unless the applicant also obtains licensing or certification, in the specific category listed in these Rules, which is appropriate to the research activity.

(l) Category 114: Aerial Pest Control: The application of pesticides by unmanned aerial vehicle (UAV), fixed or rotary wing aircraft.

(1) The Aerial Pest Control category must be held in addition to the Agricultural Pest Management Category for the aerial application being made.

(2) The Aerial Pest Control category may be obtained by successfully passing an approved Aerial Pest Control Certification examination offered by the Colorado Department of Agriculture or any state with an approved Environmental Protection Agency Certification Plan. Proof of a passing score obtained within the last 12 months with exam results 70% or better must be provided to the Department with the application.

(3) A reciprocal Aerial Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.

(4) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Aerial Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the licensure category and the applicator will be required to retest.

(m) Category 309: Soil / Non-Soil Fumigation Pest Control: For the use of a fumigant to control pests in soil or non-soil sites not otherwise addressed in Category 303, Structural Fumigation Pest Control.

(1) The Soil / Non-Soil Fumigation Pest Control category must be held in addition to the Agricultural Pest Management Category for the fumigation application being made.

(2) The Soil / Non-Soil Fumigation Pest Control category may be obtained by successfully passing the Soil / Non-Soil Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.

(3) A reciprocal Soil / Non-Soil Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.

(4) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Soil / Non-Soil Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.

8.02. Applicants for licensing as a qualified supervisor in the agricultural pest control categories, except the metam sodium for root control in sewers sub-category, must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing.

(a) Said applicant shall have obtained a minimum of eight months field experience in agricultural pest control.

(b) If said applicant has earned college or university credit in agricultural pest control or related fields, such credit may be combined with field experience in agricultural pest control in order to qualify for licensing as a qualified supervisor, as follows:

(1) Two years college credit and two months field experience in agricultural pest control; or

(2) One year college credit and five months field experience.

8.03. Commercial applicators classified in the agricultural categories shall provide the following notices of pesticide applications.

(a) Prior to each application, the customer shall be informed of: (1) the pesticide(s) to be applied, (2) the site of application, (3) applicable re-entry intervals, (4) applicable grazing intervals, (5) applicable pre-harvest interval, and (6) any precautionary statements contained on the applicable pesticide label(s). This notice may be oral.

(b) After the application, the applicator shall promptly furnish the customer with a written notice which states: (1) the pesticide(s) applied; (2) the amount of each pesticide applied; (3) the date of application; (4) the site of application; (5) applicable re-entry intervals; (6) applicable grazing intervals; (7) applicable crop rotation intervals; and (8) any precautionary statements contained on the pesticide label(s).

(c) An applicator may furnish the information specified in Parts 8.03(a)(3) through (6), and/or Parts 8.03(b)(5) through (8) above, by giving the customer a copy of the applicable pesticide label(s).

(d) In the event that a commercial applicator classified in the agricultural categories performs an application at a site which is occupied by someone other than the applicator's customer, the applicator shall be responsible for giving the notices required by Parts 8.03(a) and (b) above to the person(s) who are occupying the site, as well as to the customer. This Part 8.03(d) does not apply to applications to crops or to large-scale pest control programs.

(e) Notices in this Part 8.03 may be provided electronically when the following conditions have been met.

(1) Commercial applicators must obtain a written request from each customer and occupant confirming their request to obtain any notice required by these Rules electronically.

(2) A commercial applicator must maintain a record of the written request(s) for electronic notices from each customer and occupant.

(3) A commercial applicator that does not have a record of the written request(s) for electronic notices on file at the time of an application must provide a notice as outlined in Parts 8.03(a) - (d).

(f) Commercial, registered limited commercial, or registered public applicators must comply with all applicable signage requirements for aquatic applications in Part 13 below.

8.04 An applicant for licensing in the sub-category of metam sodium for root control in sewers shall satisfy each of the following requirements:

(a) In addition to any other required examination, an applicant must take and pass the specific examination for this sub-category, but not the examination for the aquatic pest control category.

(b) An applicant for licensing as a qualified supervisor in this sub-category must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing.

(1) An applicant shall have obtained a minimum of 40 hours of field experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers; or

(2) If an applicant has a Level 2 or 3 wastewater collection certification issued by the Colorado Water Distribution and Wastewater Collection Systems Council, or a Class A, B, or C wastewater treatment plant operator certification issued by the Colorado Department of Public Health and Environment pursuant to Title 25, Article 9 of the Colorado Revised Statutes, the applicant shall have obtained a minimum of 20 hours of field experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers.

(c) Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in this sub-category shall have at a minimum 32 hours of training:

(1) At least 8 of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(2) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

(d) Each sales technician working for a commercial applicator licensed in this sub-category shall have at a minimum 32 hours of training:

(1) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety;

(2) At least 16 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. No more than 8 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety; and

(3) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor.

(e) Each applicator technician or sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in this sub-category shall have after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers,

including, but not limited to, metam sodium for root control in sewers, within the last 2 years. The qualified supervisor shall determine from those topics enumerated above in Parts 8.04(c)(1) and (2) the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

(f) Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in this sub-category shall have at a minimum 16 hours of training:

(1) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(2) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(3) The remaining 4 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(4) Experienced sales technicians are not required to complete training in use, equipment and calibration, nor applicator safety.

Part 9. Ornamental Applicators.

9.01. The ornamental classification includes the following categories:

(a) Category 206: Turf Pest Control: the application of pesticides to: (1) managed turf to control invertebrate pests, including insects, mites, slugs, snails, and nematodes, or to control plant diseases or weeds; (2) ornamental beds to control weeds; (3) xeriscaped or similar areas covered in mulch or other media to control weeds; or (4) sidewalks, driveways, paved areas other than parking lots or bare ground located on private or public property and that are not located in the zoned right-of-way to control weeds.

(1) Managed turf or ornamental beds located in a zoned right-of-way may be treated under this Category 206 or Category 109, as defined under Part 8.01(i).

(2) When making applications to managed turf or ornamental beds in right-of-way areas, all notification requirements applicable to Category 206 apply.

(3) Managed turf for this Part 9 is defined as ground cover that is watered, mowed, seeded, or regularly maintained for defined ground cover.

(b) Category 207: Ornamental Pest Control: the application of pesticides to ornamental trees, shrubs, beds, flowers and other ornamental plants, except turf or indoor ornamental plants, to control invertebrate pests, including insects, mites, slugs, snails and nematodes, or to control plant diseases.

9.02. Applicants for licensing as a qualified supervisor in the turf category, described in Part 9.01 (a) must have the following experience or equivalents. Such field experience must have been obtained within the two years immediately preceding the date of the applicant's application for licensing. Experience in the application of pesticides gained by the applicant in the maintenance of his own home shall not constitute experience which will satisfy experience requirements imposed by these Rules.

(a) Said applicant shall have obtained at least four months of field experience in turf pest control.

(b) If said applicant has earned college or university credit in turf pest control or related fields, such credit may be combined with field experience in order to qualify for licensing, as follows:

(1) Two years college credit and one month field experience; or

(2) One year college credit and two and one-half months field experience.

9.03. Applicants for licensing as a qualified supervisor in the ornamental category described in Part 9.01(b) must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing. Experience in the application of pesticides gained by the applicant in the maintenance of his own home shall not constitute experience which will satisfy experience requirements imposed by these Rules.

(a) Said applicant shall have obtained at least eight months field experience in ornamental pest control, gained within not less than two calendar years.

(b) If said applicant has earned college or university credit in ornamental pest control or related fields, such credit may be combined with field experience in order to qualify for licensing as a qualified supervisor, as follows:

(1) Two years college credit and four months field experience; or

(2) One year college credit and six months field experience in ornamental pest control.

9.04. Commercial applicators classified in the ornamental category shall provide the following notices of pesticide application:

(a) Except as provided below, at the time any pesticide is applied, the commercial applicator shall leave for each customer, or for an individual at each location where an application was made if different from the customer's address, a printed or legibly written statement disclosing the fact that a pesticide has been applied, naming the pesticide or pesticides applied, the date of application, and containing such precautionary statements appearing on the pesticide's label as are necessary or appropriate to avoid endangering the health of persons or animals, or to avoid an unreasonable risk of harm to property.

(b) When any pesticide is applied at a commercial property ~~site where an owner of the site~~ or any other site managed or owned by an off-site organization or entity where an owner of the site or an agent of an owner of the site is not present at the site, the commercial applicator shall, promptly after the application, furnish the customer with a written statement that ~~states: (1) the pesticide(s) applied; (2) the date of application; and (3) such precautionary statements~~ includes the name of the pesticide(s) applied, the date of the application, and such precautionary statements appearing on the pesticide's label as are

necessary or appropriate to avoid endangering the health of persons or animals, or to avoid an unreasonable risk of harm to property. This precautionary information may be furnished by giving the customer a copy of the label(s) of any pesticide applied.

(c) When any pesticide is applied at a multi-unit dwelling site where an owner of the site or an agent of an owner of the site is not present at the site, the commercial applicator shall, promptly after the application, furnish the customer with a written statement containing the information required in Part 9.04(b) above and shall post notice-of-application signs containing the information required by § 35-10-112(2)(d), C.R.S.

(d) Notices in this Part 9.04 may be provided electronically when the following conditions have been met.

(1) Commercial applicators must obtain a written request from each customer or an individual at each location where an application was made if different from the customer's address, confirming their request to obtain any notice required by these Rules electronically.

(2) A commercial applicator must maintain a record of the written request(s) for electronic notices from each customer or an individual at each location where an application was made if different from the customer's address.

(3) A commercial applicator that does not have a record of the written request(s) for electronic notices on file at the time of an application must provide a written notice as outlined in Parts 9.04(a) through (c).

(4) Electronic notices are not sufficient to meet the requirement in this Part 9.04(c) for posting a written notice-of-application sign at any multiunit dwelling site when common areas have been treated and the owner of the site or agent of the owner of the site is not present at the site.

(e) Commercial, registered limited commercial, or registered public applicators must comply with all applicable signage requirements in Parts 12 and 13 below.

Part 10. Structural Applicators.

10.01. The structural pest control classification includes the following categories.

(a) Category 301: Wood Destroying Organism Pest Control: the application of pesticides to control termites, carpenter ants, powder post beetles, fungi, and/or other wood destroying organisms in structures and/or adjacent outside areas.

(b) Category 302: Outdoor Vertebrate Pest Control: the application of pesticides intended for preventing, destroying, repelling or mitigating any reptile, bird, feral dogs and cats, moles, voles, bats, wild carnivores, rabbits, skunks, amphibian pests not in water and any other vertebrate pest, except rats and mice.

(c) Category 303: Structural Fumigation: the application of a fumigant to one or more rooms in a structure or to the entire structure at a desired concentration and for a length of time necessary for the control of rodents and/or insect pests, including the application of a fumigant to a localized space or harborage within a structure, including but not limited to railcars, storage containers, grain storage silos or other enclosures, including tarpaulin fumigations, for ~~local~~ insect and/or rodent control. This category is required for the use of a fumigant in any licensure category authorized by Title 35, Article 10, when the application of the fumigant is made to or in a structure as defined in Part 1.02(m).

(d) Category 304: Residential/Commercial Pest Control: the application of pesticides or bait stations intended for use for preventing, destroying, repelling or mitigating structural pests, including without limitation insects and rodents. However, this category does not include the application of fumigants or actions taken to control wood destroying organisms, outdoor vertebrates, or grain storage pests.

(e) Category 305: Stored Commodities Treatment: the application of pesticides for the treatment of pests in raw grain stored in facilities which are not used for animal or human habitation; the application of plant growth regulators to agricultural commodities stored in facilities which are not used for animal or human habitation; and the application of pesticides to commodity processing equipment or commodity storage facilities (not including offices or other structures). This category does not cover applications made to control pests in potato storage facilities covered by Category 308.

(f) Category 306: Wood Preservation and Wood Products Treatment: the application of pesticides to prevent, destroy, repel or mitigate pests in wood or wood products which are, or are capable of being, incorporated into a structure, not including downed timber prior to bark removal or sawing.

(g) Category 307: Interior Plant Pest Control: the application of pesticides to house plants and other indoor ornamental plants kept or located within structures occupied by humans, including, but not limited to houses, apartments, offices, shopping malls, other places of business and other dwelling places, to control invertebrate pests that adversely affect such plants, including insects, mites, slugs, snails and nematodes; and to control plant diseases.

(h) Category 308: Post-Harvest Potato Pest Control: the application of pesticides for the treatment of pests in raw potatoes stored in facilities which are not used for animal or human habitation; the application of plant growth regulators to potatoes stored in facilities which are not used for animal or human habitation; and the application of pesticides to potato processing equipment or potato storage facilities (not including offices or other structures).

~~(1) Applicators holding a valid Category 305, Stored Commodities Treatment, as of January 1, 2016, will be awarded the Category 308 license with no further examination. The Category 308 licensure category will be valid until the expiration date of the applicator's current license. If the applicator's license expires prior to January 1, 2017, license Category 308 will also be awarded when such license is renewed, so long as all Category 305 continuing education credit requirements have been met prior to the expiration of the license.~~

~~(2) On or after January 1, 2016, any applicator wishing to obtain the Category 308 category must take and pass the Stored Potato Treatment category examination and pay any necessary fees.~~

~~(3) Applicators wishing to renew the Category 308 license after December 31, 2016, will need to obtain one (1) continuing education category credit in the Post-Harvest Potato Pest Control category prior to the expiration of their current license.~~

(i) Category 309: Soil / Non-Soil Fumigation Pest Control: For the use of a fumigant to control pests in soil or non-soil sites, not otherwise addressed in category 303, Structural Fumigation Pest Control.

(1) The Soil / Non-Soil Fumigation Pest Control category must be held in addition to the Structural Pest Management category for the fumigation application being made.

(2) The Soil / Non-Soil Fumigation Pest Control category may be obtained by successfully passing the Soil / Non-Soil Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.

(3) A reciprocal Soil / Non-Soil Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.

(4) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Soil / Non-Soil Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.

10.02. An applicant for licensing as a qualified supervisor in the structural pest control categories of wood destroying organisms, residential/commercial pest control, and fumigation must have the following field experience or equivalents. Such field experience must have been obtained during the five years immediately preceding the date of the applicant's application for licensing. Experience using pesticides gained while the applicant was maintaining his own home, or performing janitorial or maintenance duties for another in a residential, industrial or commercial location will not satisfy experience requirements imposed by these regulations.

(a) Said applicant must have obtained at least twenty-four months field experience in structural pest control. In addition, an applicant for licensing as a qualified supervisor in the structural pest control category of wood destroying organisms must have obtained, within the two years immediately preceding the date of the applicant's application for licensing, at least 100 hours of verifiable field experience in termite control. A minimum of 30 of said 100 hours must consist of verifiable "hands-on" field experience covering drill and inject and other post-treat methods and applications. Any or all of the 100 hours may be obtained in courses approved by the Commissioner.

(b) If said applicant has earned college or university credit in structural pest control or related fields, such credit may be combined with field experience in related categories of structural pest control in order to qualify for licensing as a qualified supervisor, as follows:

(1) Four years college credit and four months field experience; or

(2) Three years college credit and nine months field experience; or

(3) Two years college credit and fourteen months field experience; or

(4) One year college credit and nineteen months field experience.

10.03. An applicant for licensing as a qualified supervisor in the structural pest control categories of outdoor vertebrates, wood preservation and wood products treatment, stored commodities treatment,~~Post-Harvest Potato Pest Control~~ post-harvest potato pest control, or interior plant pest control must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing:

(a) Said applicant must have obtained at least eight months field experience in the related categories of structural pest control.

(b) If said applicant has earned college or university credit in the related categories of structural pest control, such credit may be combined with field experience in related categories of structural pest control in order to qualify for licensing as a qualified supervisor, as follows:

(1) Two years college credit and two months field experience; or

(2) One year college credit and five months field experience.

10.04. At the time of a pesticide application, a commercial applicator licensed in any structural pest control category shall leave for each customer, a printed or legibly written notice stating the name of each pesticide applied, the date applied, and such precautionary statements from the label of the pesticide or device as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property.

10.05. In the event that the customer is not the occupant, at the time of a pesticide application a commercial applicator licensed in any structural pest control category shall leave for the occupant, a printed or legibly written notice stating the name of each pesticide applied, the date applied, and such precautionary statements from the label of the pesticide or device as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property.

10.06. Notices in Parts 10.04 and 10.05 may be provided electronically when the following conditions have been met.

(a) Commercial applicators must obtain a written request from the customer or the occupant, as required, confirming their request to obtain any notice required by this Rule electronically.

(b) A commercial applicator must maintain a record of the written request(s) for electronic notices from each customer or occupant.

(c) A commercial applicator that does not have a record of the written request(s) for electronic notices on file at the time of an application must provide a written notice as outlined in Parts 10.04 and 10.05.

10.07 When making pesticide applications within a multiunit dwelling site and the owner of the site or agent of the owner of the site is not present at the site, a commercial applicator must post a written notice at the primary entrance(s) to interior common area(s) that has been treated. The notice shall state the name of each pesticide applied, the date applied, and such precautionary statements from the label of the pesticide or device as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property. Electronic notices may not be used to meet this requirement.

10.08. Bed Bug Reporting Requirements in accordance with C.R.S. 38-12-1003 and 1004:

(a) A commercial applicator, qualified supervisor, or certified operator inspecting a tenant's dwelling unit or any dwelling unit contiguous to a tenant's dwelling unit in single-family or multi-unit dwellings, in accordance with C.R.S. 38-12-1003, must provide a report of all bed bug activity that the commercial applicator, qualified supervisor, or certified operator identifies within the dwelling or any contiguous dwelling unit at the time of inspection, to the landlord within twenty-four hours of the inspection. Including:

(1) Units affected by bed bug activity; and

(2) Remediation recommendations.

(b) A commercial applicator , qualified supervisor, or certified operator inspecting a tenant's dwelling unit or any dwelling unit contiguous to a tenant's dwelling unit in single-family or multi-unit dwellings, in accordance with C.R.S. 38-12-1004, shall advise the tenant that any furniture, clothing, equipment, or personal property identified as having bed bug activity should not be removed from the dwelling unit until a pest control agent retained by the landlord determines that any bed bug treatment determined to be necessary has been completed.

(c) A commercial applicator, qualified supervisor, or certified operator providing any report in accordance with C.R.S. 38-12-1003 shall retain a copy of any such report required in Part 10.08(a) for three years.

Part 11. Storage.

Subpart A Storage Requirements for Commercial, Registered Limited Commercial, Registered Public Applicators

11.01. All commercial, registered limited commercial, or registered public applicators shall store pesticide concentrates and dilute mixtures using methods which are reasonably calculated to prevent the contamination of other products by means of volatilization, leakage, breakage or other causes, and which are reasonably calculated to avoid the creation of an unreasonable risk of harm to persons, property, domestic or wild animals, or the environment.

11.02. Pesticide storage areas shall be kept clean and orderly, and pesticide containers shall be positioned so that they are not exposed to unreasonable risk of damage to the containers or their labels.

11.03. Indoor pesticide storage areas shall be secured from access by unauthorized persons, including the general public, and locked when the building is unoccupied by an applicator or his employees.

11.04. Outdoor pesticide storage areas shall be fenced or walled, and locked. Pesticides and pesticide containers shall be covered or otherwise protected from the elements, in a manner which is reasonably calculated to minimize the risk of damage to labels, and to avoid the creation of an unreasonable risk of harm to persons, property or domestic or wild animals.

11.05. Pesticide storage areas shall be marked with a sign or signs, in letters at least one inch high, warning that pesticides are stored within and communicating the highest toxicity category any person may be exposed to within the storage area (i.e.: Danger, Danger skull and crossbones, Warning, Caution), such as: "Danger, Pesticide Storage, Authorized Personnel Only." Signage must also provide emergency contact information, in letters at least one half inch high and must state: "In case of emergency, contact: (name) at (telephone number)." Compliance with this Part 11.05 is not necessary for any person who has marked their pesticide storage areas with signs that comply with local fire department requirements. Applicators must obtain written confirmation from the local fire department if no sign(s) is required and maintain this record for inspection by the department.

11.06. Each commercial, registered limited commercial, or registered public applicator storing pesticides shall inform the local fire department of the location of the pesticide storage, and shall provide the fire department with safety data sheets for all pesticides held at the location.

11.07. Each commercial, registered limited commercial, or registered public applicator who stores pesticides shall have available, at each storage location, in good working order, one or more fire extinguishers rated for chemical fires, and materials for use in cleaning up pesticide spills.

11.08. A service container that is not at all times in the immediate custody or control of a qualified supervisor, certified operator, or technician shall have prominently displayed thereon the following information from the label affixed to the pesticide's original container: the common name of each active ingredient, if there is such a common name, or the chemical name of each active ingredient; the EPA Registration Number; each and every human hazard signal word shown on the label, and the name of the commercial, registered limited commercial, or registered public applicator. For purposes of this Part 11.08, "service container" shall mean any container holding pesticide, whether in a concentrated or diluted form, other than the pesticide's original container, that is of a size and capacity that permits it to be carried or moved by only one individual, unaided by any tool or apparatus; and "human hazard signal word" shall mean those human hazard signal words required by the U.S. Environmental Protection Agency in its rules and regulations at 40 C.F.R. § 156.10(h) (2017) (as incorporated herein by reference), to be shown on the front panel of the label affixed to the pesticide's original container. Compliance with this Rule is not necessary if the service container is marked in compliance with the rules and regulations of the occupational safety and health administration, U.S. Department of Labor at 29 C.F.R. § 1910.1200 and appendices A through E, inclusive, thereto (2017) (as incorporated herein by reference), applicable to hazard communication for chemicals.

Subpart B Storage Requirements for Licensed Private Applicators

11.09. All licensed private applicators shall store pesticide concentrates and dilute mixtures using methods which are reasonably calculated to prevent the creation of an unreasonable risk of harm to persons, property, domestic or wild animals, or the environment.

11.10. Pesticide containers shall be stored so that they are not exposed to unreasonable risk of damage to the containers or their labels.

11.11. Pesticides and pesticide containers, stored in outdoor pesticide storage areas, shall be covered or otherwise protected from the elements, in a manner which is reasonably calculated to minimize the risk of damage to labels, and to avoid the creation of an unreasonable risk of harm to persons, property or domestic or wild animals.

Part 12. Registry of Pesticide-Sensitive Persons.

12.01. Persons who apply to be placed on the pesticide-sensitive registry, which registry is hereby established, shall complete and submit an application for said registry. Said application shall be on a form provided by the Commissioner. The application shall include a statement of proof of medical justification by a physician licensed in the state of Colorado for the person who will be listed on the pesticide-sensitive registry.

12.02. Persons who apply to be placed on the registry or who apply for renewal of their registration~~,~~ shall list those addresses which abut their principal place of residence. Persons who apply to be placed on the registry or who apply for renewal of their registration may also include their principal place of employment, their principal school, or both. The principal residential, employment, and school address must be for the person for whom medical justification has been provided in accordance with Part 12.01. For the purpose of this Part 12, "school" means public and charter schools, as those terms are defined at § 22-1-101, C.R.S., as well as private schools that are supported in whole or in part by tuition payments or private donations, that serve as educational institutions for students in pre-kindergarten or kindergarten through twelfth grade or any portion thereof.

12.03. Each registration shall expire on November 1 of each year.

12.04. Each person shall report to the Commissioner, on a form provided by the Commissioner, any change to the information provided in such person's application or in such reports previously submitted, within fifteen days of such change.

12.05. Each person shall make an application to renew his registration on or before the first working day of November for the year of renewal. Said application shall be on a form provided by the Commissioner. The renewal application form shall include a statement of proof of medical justification by a physician licensed in the state of Colorado, which must be submitted every two years.

Subpart A Ornamental Notification

12.06. A commercial, registered limited commercial, or registered public applicator shall take reasonable actions to give notice of the date, ~~and~~ approximate time, and address or location of the property to be treated for ~~of~~ each and every turf or ornamental pesticide application, prior to the application, to any person who: ~~resides on property which abuts the property to be treated and whose name is on the published registry. Notification of each pesticide application to such an abutting property, including the address or location of the property to be treated, must be communicated to the pesticide sensitive person. An applicator may meet this requirement by making not less than two attempts to notify any owner or tenant who is on the registry. Such attempts shall be made as early as practicable but not later than twenty-four hours before the application.~~

(a) Principally resides on property which abuts the property to be treated and whose name is on the published registry.

(b) Has provided their principal employment address, their principal school address, or both to the Department and whose name is on the published registry.

12.07. ~~Notice may be by any method, including telephone, mail or personal notification. If attempts at notification by the applicator fail, and a pesticide application is necessary, the commercial, registered limited commercial, or registered public applicator shall attempt to notify the resident in person immediately prior to the application. Notice of the application and attempts at notification shall be placed on the door of the person requesting notification if all notification attempts fail.~~Manner of notification for turf or ornamental applications:

(a) Notification of each pesticide application to a property that abuts the principal residential address or to the principal employment address, principal school address, or both provided by the pesticide-sensitive person in his/her application must be communicated to the pesticide-sensitive person.

(1) Unless making electronic notifications pursuant to Part 12.07(b), an applicator may meet this requirement by making not less than two attempts to notify any owner or tenant who is on the registry.

(2) Such attempts shall be made as early as practicable but not later than twenty-four hours before the application.

(3) Notice may be by any method, including telephone, mail, or personal notification.

(4) If attempts at notification by the applicator fail, and a pesticide application is necessary, the commercial, registered limited commercial, or registered public applicator shall attempt to notify the pesticide-sensitive registrant in person immediately prior to the application by placing notice on the door of the pesticide-sensitive person’s principal place of residence.

(b) Electronic Notification:

(1) If an applicator provides notification to the pesticide-sensitive person electronically pursuant to § 35-10-112(1)(a)(III), C.R.S., only one attempt at notification is required, provided there has been no change to date, time, or location of the pesticide application communicated in the original electronic notice.

(2) Any change to the date, time, or location of the application must be communicated in a new electronic notification no later than twenty-four hours before the application.

(3) If a pesticide-sensitive person fails to acknowledge receipt of the applicator's electronic notification, the applicator is not required to make the additional notification attempts described in Part 12.07(a)(4) above.

(4) An applicator must maintain a record confirming that the applicator provided electronic notice to the pesticide-sensitive registrant in order for the single notification requirements in this Part 12.07(b) to apply.

(5) If an electronic means of notification is unavailable, the applicator must comply with Part 12.07(a)(2) and (4) above.

12.08. Effective July 1, 2024, a commercial, registered limited commercial, or registered public applicator shall provide notice to a pesticide-sensitive person if the applicator treats a property that is listed in the Department's searchable database as abutting, or being entirely located within two-hundred and fifty feet of, the pesticide-sensitive person's listed principal residential address. This notification may be provided electronically per Part 12.07(b).

Subpart B Structural Notification

~~12.08.~~12.09. A commercial, registered limited commercial, or registered public applicator shall take reasonable actions to give notice of the date and approximate time of any wood-destroying, residential/commercial, or interior plant pest control pesticide application, made to multi-unit dwellings, prior to the application, to any person who resides in the multi-unit dwelling to be treated and whose name is on the published registry unless otherwise noted in Part ~~12.10~~ 12.11.

~~12.09.~~12.10. Manner of notification for structural applications: ~~An applicator may meet the notification requirement by making not less than two attempts to notify any owner or tenant who is on the registry. Such attempts shall be made as early as practicable but not later than twenty-four hours before the application. Notice may be by any method, including telephone, mail or personal notification. If attempts at notification by the applicator fail, and a pesticide application is necessary, the commercial, registered limited commercial or registered public applicator shall attempt to notify the resident in person immediately prior to the application. Notice of the application and attempts at notification shall be placed on the door of the person requesting notification if all notification attempts fail.~~

(a) Notification of each pesticide application to a multi-unit dwelling where a pesticide-sensitive person resides must be communicated to the pesticide-sensitive person.

(1) Unless making electronic notifications pursuant to Part 12.10(b), an applicator may meet this requirement by making not less than two attempts to notify any owner or tenant who is on the registry.

(2) Such attempts shall be made as early as practicable but not later than twenty-four hours before the application.

(3) Notice may be by any method, including telephone, mail, or personal notification.

(4) If attempts at notification by the applicator fail, and a pesticide application is necessary, the commercial, registered limited commercial, or registered public applicator shall attempt to notify the pesticide-sensitive registrant in person immediately prior to the application by placing notice on the pesticide-sensitive registrant's door.

(b) Electronic Notification:

(1) If an applicator provides notification to the pesticide-sensitive person electronically pursuant to § 35-10-112(1)(a)(III), C.R.S., only one attempt at notification is required, provided there has been no change to date, time, or location of the pesticide application communicated in the original electronic notice.

(2) Any change to the date, time, or location of the application must be communicated in a new electronic notification no later than twenty-four hours before the application.

(3) If a pesticide-sensitive person fails to acknowledge receipt of the applicator's electronic notification, the applicator is not required to make the additional notification attempts described in Part 12.10(a)(4) above.

(4) An applicator must maintain a record confirming that the applicator provided electronic notice to the pesticide-sensitive registrant in order for the single notification requirements in this Part 12.10(b) to apply.

(5) If an electronic means of notification is unavailable, the applicator must comply with Part 12.10(a)(2) and (4) above.

~~12.10.~~12.11. The following circumstances do not require notification, as outlined in Part ~~12.08~~12.09, by structural applicators:

a) Emergency structural applications needed to ensure the safety or welfare of the general public, where it is not reasonably possible to comply with the notification requirements outlined in Part ~~12.08~~12.09.

(1) Applications specified in this Part ~~12.10~~12.11(a) require the applicator to attempt to notify any owner or tenant who is on the registry immediately prior to the application.

(2) Upon completion of the pesticide application, the applicator shall leave for each person on the registry, a printed or legibly written notice stating the name of each pesticide applied, the date and time the application was made, placement of the treatment, and such precautionary statements from the label of the pesticide that are necessary or appropriate to avoid endangering the pesticide sensitive person's health.

(3) The notification requirement in this Part ~~12.10~~12.11(a) is in addition to the requirements for the notice of application outlined in Parts 10.04 and 10.05 of these Rules.

b) The use of rodenticide baits or insecticide baits that are in any of the following formulations: gel baits, solid baits, granular, or self-contained bait stations that prevent

contact with the insecticide or rodenticide. Applications shall only be applied to common areas, in a manner where no physical contact can be made with the pesticide, or units, other than the pesticide sensitive person's individual dwelling unit. Compliance with the notice of application requirements in Parts 10.04 and 10.05 of these Rules are still required.

Part 13. Notification of Pesticide Applications.

13.01. Any commercial, registered limited commercial, or registered public applicator making a pesticide application in any turf or ornamental category shall post, at the time of application, at least one sign as specified in § 35-10-112(2)(c), C.R.S., notifying the public of the application.

13.02. The bottom of each notice-of-application sign must project at least 18 inches above the ground and the top of the sign shall be no higher than 48 inches above the ground. This provision does not apply to notice of application signs required to be posted at golf course clubhouses, which requirements are set forth in Part 13.04 below.

13.03. The sign must be posted on a lawn or yard at the property boundary between two feet and five feet from the sidewalk; if there is no sidewalk, between two and five feet from the road; or, if there is no road, between two and five feet from the property boundary. When landscaping or other conditions would make a sign inconspicuous or illegible if the sign were posted within the distances specified in this paragraph, the sign shall be posted in a similar manner such that it is conspicuous and easily legible to any adult or child entering or passing the property on foot.

13.04. For greenbelts, parks, golf courses, athletic fields, playgrounds, common property of multi-unit residential and commercial properties, or other similar recreational or common property, the signs must be posted immediately adjacent to areas within the property where pesticides have been applied in a manner that is conspicuous and easily legible to any adult or child entering the treated area(s). For applications on a golf course, the applicator shall post a sign at the clubhouse and at the first tee and the tenth tee notifying the public of the application. Notification signs at golf course clubhouses must be placed in a manner that is conspicuous and easily legible to any adult or child entering the treated area(s).

13.05. Any commercial, registered limited commercial, or registered public applicator making an aquatic pesticide application in any body of water with any legal public access shall post a sign notifying the public of the application at each place of legal public access.

Part 14. Invoice Statement.

14.01. Each commercial applicator shall include the following statement in at least 10 point legible type on the front, either at the top or bottom, of each customer invoice.

Commercial applicators are licensed by the Colorado Department of Agriculture.

14.02. This requirement may be met by any means other than handwriting or hand-printing including without limitation, printing, printed sticker, stamping, or typewriting.

Part 15. Enforcement.

15.01 The phrase "substantial danger or harm to public health and safety, to property, or to the environment" as used in § 35-10-121(2.5), C.R.S. means the existence of a condition which could reasonably be expected to cause, or the actual occurrence of:

(a) physical illness, injury, or death to one or more individuals;

(b) damage to property, either real or personal; or

(c) any adverse impact on land, air or water resources that is appreciable and not immediately reparable.

15.02 Any person who uses any pesticide classified for restricted use must be licensed as a qualified supervisor, certified operator, or private applicator in accordance with the Act and these Rules, except:

(a) any technician not licensed as a certified operator who is applying restricted use pesticides under the on-site supervision of a qualified supervisor or mixing and loading restricted use pesticides under the supervision of a qualified supervisor, and;

(b) any person working under the on-site supervision of a licensed private applicator for the purposes of raising an agriculture commodity.

(c) Any unlicensed technician or person working under the on-site supervision of a licensed private applicator must be at least 18 years old, except that an unlicensed technician must be at least 16 years old if all of the following requirements are met:

(1) The unlicensed technician is using the restricted use pesticide under the direct supervision of a private applicator who is an immediate family member.

(2) The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.

(3) The unlicensed technician is not applying the restricted use pesticide aerially.

15.03 Any person who supervises the use of any pesticide classified for restricted use must be licensed as a qualified supervisor or private applicator in accordance with the Act and these Rules.

15.04 A qualified supervisor, certified operator or private applicator shall not use or supervise the use of a restricted use pesticide in any category of licensure the person does not hold.

15.05 Any person who operates any device for hire that produces a pesticide as defined in § 35-10-103(10) C.R.S., must be licensed as a commercial applicator and be licensed as or employ or contract with a qualified supervisor in the appropriate licensure category. It is a violation of these Rules for a commercial applicator to use any such device in a manner inconsistent with labeling directions or these Rules, or in an unsafe or negligent manner.

(a) No such device may be used to treat any pest within a structure, unless otherwise allowed pursuant to Part 15.05(c) below;

(b) Such devices may only be used to control burrowing rodents, unless otherwise allowed pursuant to Part 15.05(c) below;

(c) The Commissioner may approve the use of such device in sites or to control pests other than those listed in Part 15.06(a) if he determines that such use will not pose a risk to the public health or safety. Such use shall be subject to additional requirements or restrictions the Commissioner deems necessary.

15.06 Any commercial applicator using a device for hire that produces carbon monoxide for the control of burrowing rodents must abide by the following application requirements and restrictions in addition to any device labeling directions:

(a) This Part 15.06 applies to commercial applications of carbon monoxide by means of a device to burrow openings of the following rodent species that are located within the specified distances from enclosed structures that are occupied or may be occupied by humans or animals.

(1) Pocket gopher: within 150 feet of such structures;

(2) Prairie dog: within 100 feet of such structures;

(3) Ground squirrel: within 20 feet of such structures;

(4) Rat: within 20 feet of such structures;

(5) Vole: within 11 feet of such structures;

(6) Field mice: within 8 feet of such structures;

(7) Any burrowing rodent species not listed in this Part 15.06(a): within 150 feet of such a structure.

(b) Any commercial applicator using a device to make applications of carbon monoxide to control burrowing rodents within the distances specified in Part 15.06(a) must abide by the following application requirements and restrictions:

(1) All persons or animals occupying any enclosed structure within the distances specified for the type of rodent burrow being treated in Part 15.06(a) must be evacuated from the structure during the application.

(2) If any existing carbon monoxide detectors installed in the structure activate during a burrowing rodent application, all applications within the distances specified for the type of rodent burrow being treated in Part 15.06(a) from the structure must cease immediately.

(3) Following any application listed in Part 15.06(a), applicators must enter and monitor the structure at least one hour after the application has concluded to verify that carbon monoxide levels have not risen above 9 ppm.

(4) Monitoring must be done with a carbon monoxide monitor that can detect carbon monoxide levels as low as 9 ppm. All structures must, through monitoring for carbon monoxide levels by the applicator, be verified to have carbon monoxide levels no higher than 9 ppm prior to any re-entry by the occupant.

(5) Upon any detection of carbon monoxide above 9 ppm, either from detection equipment installed in a structure or from the applicator's own monitoring equipment, all applications within the distances from the structure specified for the type of rodent burrow being treated in Part 15.06(a) must cease immediately and the following actions must be performed:

(i) The applicator must open all exterior doors of the structure and begin aerating the structure immediately.

(ii) After one hour of aeration, the applicator must enter the structure and verify that carbon monoxide levels have fallen to 9 ppm or less throughout the structure and remain at 9 ppm or less for one hour. If at any time during the monitoring process the applicator's monitoring

equipment detects carbon monoxide levels over 25 ppm, the applicator must leave the structure immediately, continue to aerate the structure, and repeat the monitoring process every hour until carbon monoxide levels fall and remain at 9 ppm or less throughout the structure for one hour.

(iii) Any detection of carbon monoxide above 9 ppm must be recorded in the applicator's records, including: (1) the time the detection occurred; (2) the level detected if known; (3) the time that levels were confirmed to have fallen to 9 ppm or less throughout the structure and; (4) the name of the applicator that performed the monitoring.

(6) In addition to the written notice required by Parts 10.04 and 10.05 of these Rules, applicators shall provide written precautionary information about carbon monoxide poisoning to the occupant or owner, including the following statement:

"Should you or a family member experience any symptoms associated with carbon monoxide poisoning within 24 hours of this treatment, such as headache, dizziness, weakness, nausea, vomiting, chest pain, or confusion, remove the person from the area where the onset of symptoms occurred and call 911 or seek medical attention."

15.07 Commercial applicators shall maintain accurate and legible office records of all carbon monoxide device applications made for hire. Such records shall include all of the following information:

(a) Name and address of the person for whom the application was made.

(b) Location where carbon monoxide application was made, if different from Part 15.07(a). The location of a field application should be fully described. In the case of roadside carbon monoxide applications, the record should include the county or state road number and the portion of roadside to which burrowing rodent treatments were applied, described by reference to mileage markers or prominent features such as road intersections, river or creek crossings.

(c) Specific rodent pest for which the carbon monoxide device application was made.

(d) Location of rodent burrow(s) to which carbon monoxide was applied.

(1) Areas treated within the distances specified in Part 15.06(a) must be recorded by specifying the number of burrow openings treated and the location of each in relation to the structure (e.g.: One prairie dog burrow opening 90 feet West of the residence).

(2) Applications made further than the distances specified in Part 15.06(a) may be recorded with a description of where the applications occurred on the property (e.g.: 10 acres located in the Northeast corner of property).

(3) An applicator may map the area(s) treated to meet this requirement; each application location made to a rodent burrow within the distances specified in Part 15.06 must be noted individually on the map.

(e) Records shall indicate that the specific pesticide applied is carbon monoxide.

(f) Date and time of application. The record shall indicate the time when the application was started and completed, in hour and minutes, with accuracy within 15 minutes.

(g) Name of the person(s) who made the application (i.e., technician, certified operator, qualified supervisor).

(h) If any detections of carbon monoxide occur, the information required in Part 15.06 (b)(5)(iii).

Part 16. Non-registered Limited Commercial Applicator and non-registered Public Applicator training requirements

16.01. This Part 16 applies to all limited commercial applicators and public applicators, as defined in Sections 35-10-103 (8) and (12), C.R.S., that are not registered with the Department pursuant to Section 35-10-109, C.R.S.

16.02. Any owner or designee of a non-registered limited commercial applicator and any employee of a non-registered public applicator must be trained prior to:

(a) The use of any general use pesticide that requires mixing or loading of a pesticide into a separate service container or application device.

(b) The use of any ready-to-use general use pesticide on the property of schools, children's day care facilities, hospitals and health care facilities required to obtain a license from the Colorado Department of Public Health and Environment pursuant to Section 25-3-101, C.R.S., and in children's playground areas.

16.03 Training is not required for the following uses of general use pesticides:

(a) The use of any anti-microbial pesticides such as those intended to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms.

(b) The use of any ready-to-use general use pesticide in areas other than those specified in Part 16.02(b).

16.04. Non-registered limited commercial applicator owners or their designee and all non-registered public applicator employees, before making any pesticide applications as specified in Part 16.02, must obtain training in all of the following subjects; laws and regulations, pesticides and their families, applicator safety, public safety, environmental protection and the use of pesticides. Persons that are required to be trained may meet these training requirements by:

(a) holding a current qualified supervisor, certified operator or private applicator license in any licensure category; or

(b) Taking and passing the qualified supervisor or certified operator general core examination or the private applicator examination within the last five years prior to the application of a pesticide; or

(c) Doing one of the following:

(1) Taking and passing the Department's on-line pesticide training course; or

(2) attending any continuing education courses that cover the required subjects and are approved by the Commissioner; or

(3) completing any other training that covers all of the above subjects and is approved by the Commissioner.

16.05. Training must be completed, at a minimum, within 3 years prior to the date of any application.

16.06. Training records for each person making applications must be maintained for a period of 3 years by the limited commercial applicator or public applicator.

Part 17. The Use of Pesticides in the Production of Cannabis

17.01. Definition and Construction of Terms for purpose of this Part 17, as used in these Rules unless the context otherwise requires:

(a) "Cannabis" means a plant of the genus Cannabis and any part of the plant.

(b) "Human consumption" means the consumption of cannabis by a person through oral ingestion, absorption through the skin, inhalation through smoking, vaporization or other means.

(c) "Tolerance" means a level of pesticide residue in or on food that the Environmental Protection Agency has determined with reasonable certainty will not pose a hazard to public health when used in accordance with label directions.

17.02. Pesticide Use on Cannabis: These Rules establish the criteria under which certain pesticides may be legally used on cannabis in the State of Colorado. To assist cannabis growers, the Department will publish a list of pesticides that it has determined meet these criteria. As of the effective date of these Rules, there are currently no pesticides that are specifically labeled or have pesticide residue tolerances established for use on cannabis by the federal government or the State of Colorado. The Colorado Department of Agriculture does not recommend the use of any pesticide not specifically tested, labeled and assigned a tolerance for use on cannabis because the health effects on consumers are unknown.

17.03. Any pesticide used in the cultivation of cannabis must be registered with the Colorado Department of Agriculture, except for purposes of research and demonstration conducted in accordance with 40 C.F.R. Part 172 (2017) (as incorporated herein by reference). Notwithstanding any other requirements in this Part 17, a pesticide on the list published pursuant to Part 17.02 that was registered at the time of purchase, but was not renewed with the Department in the subsequent registration year, may be used within that subsequent registration year until gone, unless the Department has determined that use is prohibited in accordance with Part 17.05.

17.04. Any pesticide registered with the Colorado Department of Agriculture may be used in accordance with its label or labeling directions for the cultivation of cannabis in the State of Colorado under the following conditions, provided that:

(a) For products registered by the Environmental Protection Agency under Section 3 of the Federal Insecticide, Fungicide, Rodenticide Act, no person may use a pesticide product in the cultivation of cannabis unless:

(1) All active ingredients of the pesticide product are exempt from the requirements of a tolerance, as established under 40 C.F.R. Part 180, Subparts D and E (2017) (as incorporated herein by reference);

(2) The pesticide product label allows use on the intended site of application. The term "site" for purposes of this Part 17.04 includes any location or crop to which the application is made;

(3) The pesticide product label expressly allows use on crops or plants intended for human consumption; and

(4) The active ingredients of the pesticide product are allowed for use on tobacco by the Environmental Protection Agency.

(b) Notwithstanding Part 17.04(a)(3), the Commissioner has the authority to permit the use of a pesticide product whose label does not expressly allow use on crops intended for human consumption if:

(1) The active and inert ingredients are exempt under 40 C.F.R. Part 180, Subparts D and E (2017) (as incorporated herein by reference);

(2) The pesticide product label allows use on the intended site of application; and

(3) The active ingredients of the pesticide product are allowed for use on tobacco.

(c) If the pesticide product label specifically allows use on cannabis, such use is permitted.

(d) For 25(b) minimum risk pesticide products as defined in 40 C.F.R. § 152.25(f) (2017) (as incorporated herein by reference), no person may use a minimum risk pesticide product in the cultivation of cannabis unless the pesticide product label allows use on the intended site of application and allows use on crops or plants intended for human consumption.

(e) For pesticide products with a Colorado Special Local Need registration, issued under Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act, no person may use such a product in the cultivation of cannabis unless the Colorado Special Local Need label allows use on cannabis.

17.05. The Commissioner may prohibit the use of any pesticide product for the cultivation of cannabis if the Commissioner determines that such use poses a significant threat to public health and safety or the environment.

Part 18. Statements of Basis, Specific Statutory Authority & Purpose

Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1968 through 1991 are no longer in the Departments files and are presumably in the state archives.

18.01. January 17, 1992 - Effective March 1, 1992

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1991 Supp.).

The purpose of these rules is to: revise the licensing procedures for commercial applicators pursuant to § 35-10-118 (2) (b), (c), and (d); revise the licensing procedures for qualified supervisors pursuant to § 35-10-118 (2)(b) and (c); adopt registration procedures for limited commercial and public applicators pursuant to § 35-10-118 (2) (b) and (c); adopt licensing procedures for certified operators pursuant to § 35-10-118 (2)(b), (2) (c) and (4) ; and adopt technician training requirements pursuant to § 35-10-118 (2), § 35-10-106 (l)(c), and § 35-10-110 (3) of the Pesticide Applicators' Act, Title 35 Article 10, C.R.S. (1991 Supp.).

Most issues encountered when developing these rules were neither exclusively factual nor exclusively policy. Consequently most issues were considered as both factual and policy.

Factual issues encountered when developing these rules include:

1. Commercial applicators are subcontracting with commercial applicators to perform pesticide applications. This activity can be divided into, two categories. First, there are subcontracts involving applications in the categories for which both commercial applicators are licensed. An example of this would be a commercial applicator licensed in agricultural weed control, but who has ground application equipment only, subcontracting with a qualified licensee applications for agricultural weed control that require application by air. Second, there are subcontracts involving applications for which the contracting commercial applicator is not licensed, but the subcontracting commercial applicator is. An example of this would be a commercial applicator licensed only in turf weed control subcontracting with a commercial applicator licensed in industrial and right of way applications for weed control in that category. Enforcement questions have arisen as to whom is responsible for such applications, i.e., the contracting applicator, the subcontracting applicator, or both.

2. A certificate of good standing from the Secretary of State will establish that an applicant for license is a bonafide business prior to issuance of such license.

3. In trying to define the level at which registration of public applicators should occur, the myriad of political subdivisions that may not need to register, nor choose to do so, while a sister subdivision may be required to do so by their use of restricted use pesticides was considered. It was decided to let each political entity determine what subdivision best described them as public applicators.

4. Expiration dates issued from the date of licensing have little meaning to the license holder. The birth date of the qualified supervisor and certified operator was chosen for the expiration date of their licenses, except for licenses issued pursuant to § 35-10-118(4).

5. The revised statute requires restricted use pesticides to be applied by a licensed qualified supervisor, licensed certified operator, or under the on site supervision of a licensed qualified supervisor. In the agricultural categories the pesticides being applied are often classified as restricted use. It is not uncommon for commercial applicators to employ individuals for short periods of time during the growing season to apply pesticides. The application equipment utilized often holds only one person. Therefore the individual applying restricted use pesticides from equipment holding only one person must be licensed as a qualified supervisor or certified operator. Many individuals working on this basis are licensed to use or supervise the use of restricted use pesticides in other states. Such licenses were issued pursuant to examination and/or continuing education. Because of the circumstances necessitating speedy issuance of credentials and the prior existence of similar credentials from other jurisdictions, it was the opinion of the advisory committee and the department that a certified operator's license could be reciprocal. In addition, in order to allow for emergency circumstances and still have assurance of competency, the provision for administration of an examination by the qualified supervisor so a person could apply restricted use pesticides for ten days was included.

6. When considering the requirements for continuing education the topics needed to be relevant and the opportunity to spread out the training was considered, as well as what areas were necessary to be updated every three years and how much credit was needed in each of these areas.

7. The factual issues considered when writing rules for technician training included who is a technician, the topics each type of technician should have knowledge about and be familiar with, the hours of training needed to adequately cover said topics, what is used and how the business operates, how the classroom vs. on the job training should be divided and who is responsible for the training and who can train.

Policy issues encountered when developing theses rules include:

1. Consideration of whom to hold responsible when a licensed commercial applicator is subcontracting with another licensed commercial applicator.

2. Not defining political subdivisions allows flexibility in the administration of registering public applicators.

3. In considering the continuing education requirements it was decided to allow credits vs. hours and not to assign time increments to the credits. This was done because an update in one area where there has been little change may be adequately covered in a minimum amount of time, whereas an update on another topic may require several hours to be considered adequate.

4. In relation to technician training the goal was to provide competent technicians using pesticides to assure proper application and minimization of hazards while not being overly burdensome or eliminating competition through regulation. The manner in which each business operates was also considered, i.e. the differences between an agricultural, turf, ornamental and structural business.

18.02. January 31,1992 - Effective February 1, 1992

This rule is adopted under the Pesticide Applicators' Act pursuant to § 35-10-118 and pertains to the administration enforcement of the licensing provisions authorized under Pesticide Applicators' Act.

During the 1990 legislative session, article 10 of title 35 was repealed and reenacted. Sections 35-10-105 - 107,35-10-109- 110, and 35-10-113-116 revised the types licenses issued to pesticide applicators by the department of agriculture and manner in which they are issued. The revisions included registration by limited commercial and public applicators under certain circumstances, licensing of certified operators, and training requirements for technicians.

These rules allow the Commissioner to comply with those provisions.

The notice and hearing requirements of § 24-4-103 of the Colorado Administrative Procedures Act have been met. In accordance with the timelines established for rule making the effective date for these rules will fall after the beginning of spray season. Therefore, the immediate adoption of Part 1. - 5. is imperatively necessary for the preservation of public health, safety, and welfare.

18.03. September 17, 1993 - Effective October 30, 1993

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1992 Supp).

The purpose of these rules is to: (1) set the annual licensing fee for commercial applicators pursuant to 35-10-118 (2)(d); to permit the use of a termiticide only in accordance with label directions; and to houseclean the existing rules by correcting incorrect citations, eliminate conflicting provisions, correcting misspellings, etc.

Factual issues encountered when developing the rule setting the annual license fee for commercial applicators include:

1. In 1983 the legislature repealed and reenacted the Pesticide Applicators' Act. The 1983 statute established the Pesticide Applicators' fund for the purposes of administration and enforcement of the program. It also set the licensing fee for a commercial applicator's license at $250.00.

2. In 1990 the legislature repealed and reenacted the Pesticide Applicators' Act. The current statute authorizes the Commissioner to set the amount of the license fee for a

commercial applicator, business license, not to exceed $250.00 through licensing year 1991 and $350.00 thereafter.

3. The licensing fee for a commercial applicator's business license has not been raised since 1983.

4. Program costs now exceed revenues and the fund balance has been depleted.

Policy issues encountered when developing the rule setting the annual license fee for commercial applicators include:

1. The fee structure for the commercial pesticide applicator program has been carefully considered by the Department and the Pesticide Advisory Committee. After reviewing the projected shortfall and various fee increases it was decided that the most prudent course at this tune was to increase the annual commercial applicator business license fee $100 in order to help reduce the shortfall and continue the program services.

2. The remainder of the projected shortfall will be addressed by program cost reductions.

3. In addition the Department and the Advisory Committee will continue to study the program's fee structure for further refinement and recommendations.

Factual issues encountered when developing the rule pertaining to the use of termiticides include:

1. Under Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) a pesticide application may be made at less than labeled rate as long as the label does not prohibit such an application and it is made in accordance with other label directions.

2. Many applications made for the control of termites are made at less than the labeled rate. This is especially true for pretreat applications.

3. To date there is no scientific data to support the efficacy of using a termiticide at less than the labeled rate.

4. Consumers, especially pretreat customers, may be purchasing termite control, assuming a protection has been afforded them when in actuality very little termiticide has been applied.

5. Efficacy studies at less than the current labeled rate are being performed.

6. If the studies show efficacy at less than labeled rates, then this rule will be reconsidered.

Policy issues encountered when developing the rule pertaining to the use of termiticide include:

1. The issue of applications at less than the rates stated on any label was considered. It was decided to limit the rule to termiticide applications only.

2. The issue is one of consumer protection and the potential for fraudulent applications if the 2 (ee) policy is continued as it relates to termiticides.

3. The Federal Insecticide, Fungicide and Rodenticide Act clearly authorizes a state to be more restrictive than the Act, but not less. This rule is more restrictive and falls well within statutory authority.

Factual issues encountered when developing the housekeeping measures included incorrect citations, misspellings, conflicting provisions and unclear provisions exist in the current rules.

Policy issues encountered when developing the housekeeping measures included the necessity of maintaining correct rules.

18.04. July 28, 1994 - Effective September 30, 1994

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1993 Supp.)

The purpose of the rules is to: create a mixer/loader category pursuant to 35-10-118 (2) (b); clarify the qualifications for licensing in the wood destroying organisms category pursuant to 35-10-118 (2) (b); clarify the definition of technician to include flaggers for purposes of technician training; and correct the terminology in the requirements for licensing as a qualified supervisor/certified operator.

Most issues encountered when developing these rules were neither exclusively factual nor exclusively policy. Consequently most issues were considered as both factual and policy.

Factual issues' encountered when developing these rules include:

1. It is not unusual for commercial applicators licensed in the agricultural categories, especially aerial applicators, to employee individuals who only mix and load the pesticides being used. These employees do not evaluate pest problems, make recommendations, sell services, etc. Many of the pesticides used by applicators licensed in the agricultural pest control categories are restricted use pesticides. This means the employee can only handle these pesticides if they are licensed as a certified operator or qualified supervisor, or if a licensed qualified supervisor is on site. In order to obtain a license an individual must successfully complete a general examination and category specific examinations. The category specific examinations include questions on pests, hosts, pest control and various subjects related to evaluating pest problems, making recommendations, selling services, etc. Since mixer/loaders do not perform these functions, and will not perform them, the category specific examinations are difficult for them to successfully complete and irrelevant to their job. The subjects on the general examination cover the topics in which an individual acting strictly as a mixer/loader would need to be knowledgeable.

2. To control termites a structure may be treated prior to completion or a finished structure may be treated. The skills and knowledge needed to perform these two different types of applications are vastly different. The language setting out the experience for licensing in the wood destroying organism control category was nebulous. An individual with only pre-treat experience and knowledge could be licensed to perform any wood destroying organism control application whether or not he had any post-treat experience. Only a few commercial applicators perform termite applications because of the cost of the equipment and specialization of the service.

3. The code of federal regulations associated with the Federal, Insecticide, Fungicide and Rodenticide Act (FIFRA) has been amended to include expanded worker protection regulations. These regulations cover all handlers including flaggers.

Policy issues encountered when developing these rules include:

1. In relation to establishing a new mixer loader category we had to consider how to comply with both the letter and the intent of the statute without being unduly burdensome on the industry.

2. In relation to defining more specifically the experience needed for licensing in the wood destroying organism category the potential for restraint of trade had to be considered.

18.05. January 19, 1995 - Effective March 2, 1995

This rule is adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1994 Supp.)

The purpose of the rule is to correct a typographical error in the existing rule. Factual issues encountered when developing these rules include:

A typographical error was discovered in the Part 9.02 (b) of the rules. This rule as published states “Such field experience shall have been obtained within the five years immediately preceding the applicant's application for licensing as a qualified supervisor.

Policy issues encountered when developing these rules include:

To be consistent with Part 9.02 and with the original intent of the rule the error needed to be corrected.

18.06. July 23, 1996 - Effective August 30, 1996

STATUTORY AUTHORITY: These emergency rules are adopted by the Commissioner of the Colorado Department of Agriculture (the “Commissioner”) under the authority of §35-10-118 (2) and (9) C.R.S. (1995), and in accordance with §24-4-103 (6) C.R.S. (1988, 1995 Supp.).

STATEMENT OF REASON: The reasons for adopting these emergency rules is to: (1) create a sub-category for the use of the pesticide metam-sodium to control roots in sewers pursuant to §3510-118 (2)(b), and set out the standards and criteria associated with the establishment of such a sub-category; (2) repeal Part 8.04 and amend related language in the existing rules concerning mixer/loaders in order to be consistent with amendments to the Pesticide Applicators' Act derived from Colorado Senate Bill 96-086, which became law effective July 1, 1996; and (3) make miscellaneous technical amendments to conform the existing rules to the amendments hereby adopted.

On June 23,1996, the Commissioner ordered that proceedings be instituted for the adoption of new permanent rules and regulations pertaining to these matters, and notice was published on July 10,1996, in accordance with applicable law, for a hearing on such proposed new permanent rules and regulations to be held on July 30, 1996, at 9:00 a. m., at the Department of Agriculture, Division of Plant Industry Testing Room, 700 Kipling Street, Suite 4000, Lakewood, Colorado 80215-5894.

NEED FOR EMERGENCY RULES: These emergency rules pertaining to the creation of a sub-category for the use of metam-sodium to control roots in sewers, the standards and criteria associated with the establishment of such a sub-category, and the technical amendments in furtherance thereof, are made necessary by action of the U.S. Environmental Protection Agency (“EPA”). The EPA recently classified the pesticide metam-sodium as a restricted use pesticide when used to control roots in sewers. Applicators wishing to purchase or use this pesticide must now be certified to do so. I is imperative that these emergency rules be adopted in order to permit the Colorado Department of Agriculture, Division of Plant Industry to license and regulate the activities of pesticide applicators who wish to use metam-sodium for root control in sewers pending the conclusion of the formal rule-making proceedings initiated by the Commissioner for the adoption of permanent rules and regulation on this subject.

The emergency rules pertaining to the repeal of Part 8.04 and the amendment of related language in the existing rules concerning mixer/loaders, and the technical amendments in furtherance thereof, are necessary to conform the existing rules and regulations with amendments to the Pesticide Applicators' Act derived from Colorado Senate Bill 96-086, which became law effective July 1,1996, pending the conclusion of the formal rule-making proceeding initiated by the Commissioner for the adoption of permanent rules and regulations on this subject.

Based on the foregoing, the Commissioner hereby finds that immediate adoption of these rules is imperatively necessary to comply with state law and federal regulations, and for the preservation of public health, safety and welfare and that compliance with the formal rule- making requirements of §24-4-103 would be contrary to the public interest.

EFFECTIVE DATE: These emergency rules will be effective on the date adopted by the Commissioner, and shall remain in effect for ninety (90) days thereafter.

18.07. September 25, 1996 - Effective November 30, 1996

Statutory Authority: These permanent rules are adopted by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under C.R.S. § 35-10-118(2), (4) and (9) (1995, as amended).

Purpose: The purpose of these permanent rules is to: (1) create a sub-category for the use of the pesticide metam sodium to control roots in sewers pursuant to C.R.S. § 35-10-118(2)(b), and set out the standards and criteria associated with the establishment of such a sub- category: (2) repeal Part 8.04 and amend related language in the existing rules concerning mixer/loaders in order to be consistent with amendments to the Pesticide Applicators' Act derived from Colorado Senate Bill 96-086, which became law effective July 1, 1996; (3) revise the recordkeeping requirements Part 6.03(e);(4) clarify the language in Part 2.49 concerning the issuance of reciprocal licenses; and (5) make miscellaneous technical amendments to conform the existing rules to the amendments hereby adopted and to correct grammatical errors.

Basis: Some of the issues encountered in the promulgation of these permanent rules were neither exclusively factual nor exclusively of a policy nature. Consequently, some issues were considered as both factual and of a policy nature.

The factual and policy issues encountered in adopting these permanent rules include:

1. Factful Issue(s): The U.S. Environmental Protection Agency (EPA) recently classified the pesticide metam sodium as a restricted-use pesticide when used to control roots in sewers. Applicators wishing to purchase or use this pesticide must now be certified to do so.

   Policy Issue(s): This classification by the EPA has made it necessary to create a new sub- category of aquatic applicators for the application of metam sodium for root control in sewers. In establishing this sub-category, consideration had to be given to complying with both the letter and the intent of the Pesticide Applicators' Act (the Act) without being unduly burdensome on the industry or the agency.

2. Factual Issue(s): Colorado SB 96-086 amended C.R.S. 3510-103(15)(a) (II) of the Act to amend the definition of “technician” to include individuals who exclusively mix and/or load pesticides. This makes the mixer/loader sub-category in the agricultural classification unnecessary.

3. Factual Issue(s): Part 6.03 of the existing rules requires licensed entities to identify the pesticide product they are using. Recording the EPA registration number of the pesti-cide product is a permitted method under the existing rule, but not required.

   Policy Issue(s): Generally, the EPA registration number can more accurately identify a product than the manner in which a licensee may choose to describe the product name, and under the adopted rule, is a required method of identifying the pesticide.

4. Factual Issue(s): Part 2.49 describes the procedure by which an individual certified or licensed by another jurisdiction can obtain a

Colorado license as a certified operator issued through reciprocity. The existing language in this part does not make it clear that the issuance of such a license can only be done through re-application, since the Colorado Department of Agriculture is not the original issuing agency. The adopted rule clarifies this point.

18.08. March 13, 1997 - Effective April 30, 1997

Statutory Authority:

These permanent rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under the Pesticide Applicators' Act (the "Act") at C.R.S. §§ 35-10-118(2), (5) and (9) (1995, 1996 Supp.).

Purpose:

The purpose of these proposed permanent rules is to: amend the definition of the term "abut"; conform the rules and regulations to the amended statutory definition of the term "limited commercial applicator"; repeal Section 2.42; to clarify the language in Section 2.45 regarding when a qualified supervisor may be licensed as a certified operator in an additional category without payment of the application fee for the certified operator's license; consolidate the turf categories into a single category under the ornamental classification, and modify the continuing education requirements therefor; consolidate the ornamental categories into a single category under the ornamental classification, and modify the continuing education requirements therefor; expand, under certain circumstances, the customer notification requirements for pesticide applications at a commercial site; create a new category named "Interior Plant Pest Control" within the structural pest control classification, and establish standards therefor; establish requirements for the identification of service containers; amend the requirements for registration of pesticide sensitive persons pertaining to the statement of proof of medical justification, the frequency for submitting such statement, and payment of the administrative fee for registration; create a Part 15 for rules and regulations pertaining to enforcement, and establish a definition for the phrase "substantial danger or harm to public health and safety, to property, or to the environment" as required by Senate Bill 96-086, which amended C.R.S. § 35-10-121 by adding subsection (2.5); and make miscellaneous technical amendments to conform the existing rules to the amendments hereby proposed.

Factual and Policy Issues

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

(1). Senate Bill 96-086 amended C.R.S. § 35-10-112(l)(c), which deals with requirements for notifying persons who reside on property abutting the site of a pesticide application. The amendment provides that two property sites that would be considered abutting but for the fact that they are separated by an alley are for the purposes of this section to be deemed abutting. This statutory change requires amendment of the term "abut" in Section 1.02(a) of the rules in order to make it consistent with this statutory amendment.

(2). Senate Bill 96-086 amended C.R.S. § 35-10-112 (l)(a), which pertains to the registry of pesticide-sensitive persons. This amendment requires that the proof of medical justification for inclusion on the registry be made by a physician licensed in the state of Colorado, that it be updated every two (2) years, and that the administrative fee for registration be repealed. These statutory changes require conforming amendments to the following sections of the rules: Sections 1.02(e), 12.01, 12.04, and 12.05.

(3). Senate Bill 96-086 amended C.R.S. § 35-10-103(8), which defines the term "limited commercial applicator." This amendment expands the definition of the term to include

persons engaged in applying pesticides in the course of conducting a business on property leased, as well as property owned by the person or the person's employer. This statutory change requires a conforming amendment in Section 2.18 of the rules.

(4). Section 2.42 of the rules is repealed because it was needed only for a limited time in order to facilitate the administrative transition from the previous licensing system to the current one.

(5). Section 2.45 of the rules is amended only to clarify its provisions. No substantive change to this rule is intended.

(6). The ornamental classification now in effect has the following categories: Turf Insect Control, Turf Plant Disease Control, Turf Weed Control, Ornamental Insect Control and Ornamental Plant Disease Control. The three turf pest control categories all pertain to working on one type of site, namely turf, except for weed control in ornamental beds. The two ornamental categories cover a wide range of sites, but labels for pesticide products used on these types of sites often state the site as “ornamentals” and do not distinguish between various hosts such as locust, elm, etc. A qualified supervisor or certified operator working in any of the current turf categories needs to be aware of symptoms indicative of environmental, cultural practice and pest stresses in the related turf categories in order to properly diagnose a problem and recommend the correct solution. This also applies to a qualified supervisor or certified operator working in any of the current ornamental categories.

The proposed amendments to Section 9.01 of the rules consolidates the three turf categories into a single category, and consolidates the two ornamental categories into a single category. This consolidation will require persons who wish to be licensed in either of these categories to possess a broader range of knowledge covering what was previously divided into separate categories. Thus, one examination for each of the two consolidated categories (i.e., turf and ornamental) will be given rather than the multiple examinations currently given for each of the five separate categories described above.

Also, because of the broader range of knowledge required for each of these consolidated categories, the continuing education requirements for these consolidated categories will be increased from one to two credits. This change is reflected in the amendments to Section 4.01, which will be phased in beginning January 1, 1998.

These proposed amendments to Section 9.01 require the technical conforming amendments that are proposed for Sections 9.02 and 9.03, and 5.7 through 5.21, inclusive.

(7). Senate Bill 90-086 amended C.R.S. § 35-10-112(2) (d) by adding sign posting notification requirements where a commercial or limited commercial applicator makes a pesticide application to a commercial site when the owner or agent of the owner is not present at the site. The proposed amendments to Section 9.04 of the rules are intended to broaden the notification requirements of that rule (which are unrelated to the statutory sign posting requirements) to specifically address the situation where a pesticide application is made to a commercial site when the owner or agent of the owner is not present.

(8). The number of interior plants in public structures has gradually increased over the last twenty years. Over time, more and more caretakers of these interior plants have come under the regulation of the Colorado Department of Agriculture with respect to the application of pesticides. These interior plant caretakers have had to qualify for licensing in categories that are not entirely applicable to the circumstances in which they work (e.g., Ornamental Insect Control and Ornamental Plant Disease Control, which cover exterior plants). The addition of an Interior Plant Pest Control category will correct this

situation. It will also provide the Colorado Department of Agriculture and the public with a greater assurance that the qualified supervisors, certified operators and technicians working in this category are qualified to do so.

Consideration was given to the placement of this category in either the ornamental classification or the structural pest control classification. Since pesticide applications to indoor plants are made inside buildings and other structures, this new category was placed in the structural pest control classification because the hazards related to such applications and the precautions that need to be taken when making them are more closely related to that classification than the ornamental classification.

The addition of this new category is reflected in the proposed Section 10.01(8) of the rules. The amendments to Sections 10.03 and Sections 5.25 through 5.28, inclusive, are technical amendments made to conform those rules to the addition of this new category.

(9). Under certain circumstances licensees under the Act transfer pesticides into smaller containers in order to perform or facilitate its application. For example, a structural pest control operator may purchase a 10 gallon pail of rodent bait and provide each of his technicians with a one gallon container of the bait taken from the 10 gallon container. Additionally, certain application equipment is of a size that can be carried and handled by one individual, e.g., a one gallon sprayer used to spot treat weeds in turf. The industry refers to these containers as “service containers.” At one point in time the EPA had an operating policy which detailed the requirements for marking service containers so the material in it could be identified. EPA's operating policy was rescinded and is no longer in force.

A new rule requiring the identification of service containers is necessary and appropriate for the public's health, safety and welfare now mat the EPA's operating policy has been rescinded. In establishing the requirements for marking service containers, consideration had to be given about providing information essential for safety and welfare without being unduly burdensome on the industry, and without conflicting with existing federal regulations. This new rule appears in the proposed Section 11.08.

(10). Senate Bill 96-086 amended C.R.S. § 35-10-121 by adding subsection (2.5), which relates to enforcement proceedings brought under the Act. This subsection (2.5) requires the Colorado Commissioner of Agriculture to define the phrase “substantial danger or harm to public health and safety, to property, or to the environment.” In response to this statutory amendment, the rules are amended to add a Part 15. Enforcement, and to define the foregoing phrase in proposed Section 15.01.

18.09. February 11, 2004 - Effective May 3, 2004

Statutory Authority

The amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under the Pesticide Applicators' Act, (the “Act”). §§ 35-10-118(2)(a)(b)(c), (5), and (9), C.R.S.

Purpose

The purpose of these proposed rule amendments is to: In Part 1, add the definition of “in the possession of to clarify the proposed rule 7.06, that requires the applicator to have label information at the site of any pesticide application; in Part 2, amend Rule 2.10 by requiring all categories to have on file at the time of submission of an application for renewal of a license, evidence of liability insurance which is in force at the time of the application; amend Rules 2.15 and 2.16 by adding a requirement for a written provision in contracts that incidentally require a pesticide application, that notes that a licensed subcontractor will be

used for any pesticide application the primary contractor is not licensed for; in Part 4, delete Rule 4.1 that expired on January 1, 1998 and remove language from the version of Rule 4.1 (h) noting the effective date of the current Rule; delete the version of Rule 4.5 that expired on January 1, 1993 and remove language from Rule 4.5 noting the effective date of the current Rule; in Part 5, amend Rule 5.1 by clarifying that the definitions outlined in 5.1 apply to all technician training outlined in Part 5 of the Rule; amend Rule 5.1(b) by adding the definition of a “new hire experienced technician” and “on-going experienced applicator technician” to clarify training differences outlined in Part 5; amend Rules 5.5, 5.10, 5.15, 5.20, 5.23, and 5.27 to clarify that training requirements outlined in each section pertain to on-going experienced applicator technicians and that on-going training must be conducted each year after the first season of experience; amend Rules 5.6,5.11,5.16, 5.21, 5.24, and 5.28 to clarify that the training requirements outlined in each section pertain to new hire experienced technicians; amend Rules 5.9(c) and 5.18(c) to clarify the amount of on the job training hours that must be conducted by a licensed qualified supervisor or certified operator; in Part 6, amend Rule 6.02 to require limited commercial and public applicators to maintain records of all pesticide applications they make; amend Rule 6.03 by adding a requirement that the record of application must have the name of the person(s) who made the application; amend Part 6 by adding a new Rule 6.04 requiring any applicator performing wood destroying insect control for termites to keep and maintain records in addition to those outlined and proposed in Rule 6.03; in Part 7, amend Rule 7.02 by adding requirements for commercial and public applicators to identify their ATV/off-road application equipment; amend Rule 7.02 by adding requirements for public applicators to identify their application equipment; amend Part 7 by adding a new Rule 7.06 to require that a copy of the label for the pesticide in use be in the possession of the applicator at the site of application; in Part 8, amend Rules 8.01 (f) and (g) to clarify that additional licensure in the turf and ornamental categories is required when performing applications in forest or rangeland areas that come within 50 feet of residential or commercial structures; amend Rule 8.01(j) by deleting the language “in programs” and “large scale” to clarify that the Public Health category applies to any pesticide application performed for disease vector control; in Part 11, amend Rule 11.08 to require the name of the applicator in addition to the existing service container labeling requirements; in Part 13, amend Rule 13.04 to clarify that notification signs must be posted within multi-unit residential and commercial properties in a conspicuous manner to prevent children or adults from entering a treated area; and make miscellaneous technical amendments to conform the existing rules to the amendments hereby proposed.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1) Amendments and additions being made in Parts 1,2,4, 5, 6 and 8 are necessary to correct and clarify existing language, delete out dated and irrelevant language, and correct and clarify ambiguous language to reflect the regulatory intent of the existing licensure, business, record keeping, and training requirements.

2) A new Rule is proposed in Part 6 to require the signature of the applicator on the service record to help the CDA identify the technician, certified operator, or qualified supervisor responsible for each application during investigations.

3) In the last 10 years the termite activity in Colorado has increased. A high level of knowledge and experience in building construction, treatment techniques, and termite biology is needed when performing these applications. Since these applications are made in areas where the consumer can not verify the quality of the application and consumers generally do not possess the knowledge to know the correct steps and procedures to eradicate or control a termite infestation, it is easy for commercial applicators to defraud the consumer. The proposed Rule 6.04 will require applicators to record information specific to termite applications that will allow the CDA to confirm that all treatments were performed to label requirements and industry standards.

4) In recent years the Pesticide Application industry has begun using All Terrain Vehicles (ATV's) to perform applications in areas that are inaccessible to standard application

vehicles. Under the current Rule 7.02, these ATV's meet the specifications that require the vehicle to be identified, but due to their size applicators have been unable to comply. The proposed Rule addresses this issue and modifies the equipment identification requirements so applicators can identify their equipment, which will ensure the public and the CDA can identify these applicators.

5) Currently under Rule 7.02, public applicators are not required to identify their application equipment. Each year the CDA receives a number of inquiries and complaint calls pertaining to public entities that are performing pesticide applications that the CDA office staff must research to determine jurisdictional authority. A new Rule is proposed to require public applicators to identify their application equipment to enable the public and CDA to easily identify the public entity in the field, which will reduce public concern and minimize the CDA staff time required to identify currently registered public applicators.

6) Pine Beetle eradication has become a priority for the State of Colorado. As the Pine Beetle infestation has spread, more applications are being performed on private property where the trees are no longer being maintained as part of a forest, but rather as ornamental trees for aesthetics. Applications performed around residential and commercial structures create a higher likelihood that persons or pets may come in contact with the treated area. Ornamental applicators are trained in the precautions needed when making applications around structures, and under 35-10-112 of the PAA are required to post notification at the time of an application. The current Forest category does not address the hazard identification and safety precautions needed when performing pesticide applications in close proximity to inhabited structures. An amendment to Rule 8.01 (f), Forest Pest Control, is proposed to require applicators to hold the appropriate ornamental license, which addresses the safety, hazard, and notification requirements needed when performing applications close to an inhabited structure. The Rangeland Pest Control category, 8.01(g), has the same safety concerns when pesticide applications are made around inhabited structures for insect or noxious weed control. The Rangeland category requirements will be identical to the Forest category except that licensure in the Turf category will be required.

7) Rule 11.08 currently requires that any service container be labeled to identify the contents within. Since these service containers are in many cases left at the customer's residence (i.e.: rodent bait stations) or can be inadvertently left behind or left unattended by an applicator, the CDA is proposing an amendment to Rule 11.08 that will require the name of the licensee on the label. In case of an emergency this will provide the name of the licensee so pertinent information for the unattended product (i.e.: labels and Material Safety Data Sheets) can be obtained and the responsible licensee can be quickly contacted to take appropriate remedial action.

8) Currently turf and ornamental applicators are only required to post a notification flag at each entryway to a property regardless of its size or the number of buildings on it. Each year the CDA receives calls from pesticide sensitive individuals or concerned parents complaining of turf or ornamental applications that have been performed at their apartment complex and their child or pet, unbeknownst to them at the time, entered a treated area. The current rule in Part 13 does not specify that a flag(s) must be posted within the common areas of multi-unit residential or commercial properties. The proposed amendment to Rule 13.04 will help ensure that any person entering a common area that has been treated with pesticides will be able to see a flag notifying them of that application.

18.10. October 19, 2006 - Effective January 1, 2007

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under the Pesticide Applicators' Act, (the "Act"). §§ 35-10-118(2)(a)(b)(c), (5), and (9), C.R.S.

Purpose

The purpose of these proposed rules is to make conforming amendments is to address statutory changes made to the Pesticide Applicators' Act as a result of House Bill 1239, The Pesticide Applicators' Act Sunset Review Pesticide Applicators' Bill, and House Bill 1274, The Pesticide Applicators' Act Pesticide Private Applicators License Bill. The purpose of the proposed Rules is to:

- Make miscellaneous technical amendments to conform the existing rules to the amendments proposed;
- Add language to reinstate an pesticide applicator license within 180 days;
- Outline the private applicator examination and licensure requirements and provisions;
- Address examination security provisions for commercial and private applicators;
- Create continuing education requirements as it pertains to private applicators;
- Specify recordkeeping requirements for commercial, registered limited commercial, registered public applicators and licensed private applicators;
- Clarify the pesticide storage requirements of commercial applicators, registered limited commercial applicators, limited public applicators, and private applicators;
- Specify pesticide sensitive notification requirements and provisions that apply to turf and ornamental applicators vs. structural applicators;

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1) House Bill 1274 amended C.R.S. § 35-10-104 to expand the authority of the Colorado Department of Agriculture to regulate the use of pesticides by all persons in the State of Colorado. As a result of H.B. 1274, amendments and additions made in Parts 2, 3, 4, 5, 6, 7, 8, 11,12, and 13 and associated Rules are necessary to clarify what Part and Rule applies to "registered' or "licensed" persons and/or entities in the State of Colorado. Other changes include spelling and miscellaneous technical amendments to conform the existing rules to the proposed amendments.

2) House Bill 1274 amended C.R.S. § 35-10-103 to add the definition of a private applicator, which defines a private applicator as a person who "uses or supervises the use of a pesticide for producing an "agricultural commodity." C.R.S. § 35-10-114.5 requires any person who uses or supervises the use of a restricted use pesticide shall possess a valid private applicator license issued by the Commissioner. There is no State definition of "agricultural commodity" for CDA to refer to when it must determine if a private applicator is raising an agricultural commodity prior to certifying and issuing a private applicator license. CDA needs to verify that the license is being obtained and will be used in the manner intended. Upon request from EPA Region VIII, Part 1 was amended to create Rule 1.02 (k), which defines an "agricultural commodity". The definition will help clarify for CDA and applicants that a private applicator must be engaged in the production of an "Agricultural Commodity", as defined, to qualify to obtain a private applicator license

which will allow them to purchase, apply, and supervise the use of restricted use pesticides on property they own or lease.

3) House Bill 1239 amended C.R.S. §35-10-116(6) of the Act to give the CDA the authority to "reinstate" an applicators license, within 180 days of its expiration, on the condition that all continuing education requirements had been met prior to the expiration date. The currant language in Rule 2.46 addressed renewal requirements only. Rule 2.46 is amended by adding the licensure reinstatement provisions, outlined in C.R.S. §35-10-116 (6), for added clarity that an applicator may "reinstate" a license if certain provisions are met.

4) House Bill 1274 amended C.R.S. §35-10-115, which authorizes the CDA to begin issuing licenses to private applicators on and after January 1, 2007 and by adding a new statutory provision, C.R.S. §35-10-114.5, requiring any person acting as a private applicator using or supervising the use of restricted use pesticides be licensed as a private applicator by the Commissioner. Rule 2.50 is being repealed because it created a loophole that did not allow the CDA to enforce the provisions of the Act and Rules for someone acting as a certified operator if: they were a new employee, completed the private applicator exam issued by EPA Region VIII, their employer notified the department within 3 days and they completed the certified operator test within 14 days from their initial employment. EPA Region VIII will no longer be issuing private applicator licenses after January 1, 2007 and the CDA no longer wants to continue to allow a person to act in the capacity of a certified operator, which allows applications of RUPs in categories their employer is licensed in, without taking a closed book test, verifying that they have core knowledge of laws and regulations, applicator safety, public safety, environmental protection, use of pesticides, and pesticides and their families, to apply a "higher risk" pesticide in the general public.

5) House Bill 1274 amended C.R.S. §35-10-115, which authorizes the CDA to begin issuing licenses to private applicators on and after January 1, 2007. A new statutory provision, C.R.S. §35-10-114.5, requires any person acting as a private applicator using or supervising the use of restricted use pesticides be licensed as a private applicator by the Commissioner. Under H.B. 1274, C.R.S. §35-10-117 (1)(a) was amended to make it unlawful for any person to perform acts that require licensure as a private applicator. C.R.S. §35-10-118 (2)(b) and (c) authorize the Commissioner adopt Rules to establish qualifications for issuance and reinstatement of any license issued under the Act. These statutory changes require conforming amendments by the creation of a new Subpart D, part 2.48 through 2.58, which addresses private applicator licensure requirements, submission of information requirements, examination requirements, fee requirements, renewal and reinstatement provisions, supervision, licensure upgrades and reciprocity.

6) Under C.R.S. §35-10-118(2)(c) the Commissioner is authorized to adopt Rules for any disciplinary actions authorized under Title 35, Article 10. Part 2, Subpart E, "Licensure Actions, Suspension, Denial, Revocation", Rule 2.59, was existing language that was moved from Part 7 of the Rules. This Rule outlines actions that constitute grounds for denying, suspending or revoking a business entity's license or registration or an individual's license. This section was moved from Part 7 to Part 2, which outlines business licensure and registration requirements and individual license issuance and renewal requirements, for clarity.

7) Add language to coincide with H.B. 1239, C.R.S. §35-10-118(3)(c), by adding clarifying language stating the commissioner or "his or her designated administrator shall" administer a general examination to qualified supervisors and certified operators and add "private applicator" to the current examination administration provisions set forth in Rule 3.1 and 3.2 to include private applicators as a result of H.B. 1279.

8) Repeal Rule 3.3, to remove unnecessary language from the Rule pertaining to when the examinations will be administered by the Commissioner.

9) Part 3, Rule 3.8, was amended by adding language to the existing exam security provisions, creating a section (a) pertaining to commercial applicators and a new section (b) pertaining to private applicators. Rule 3.8(a) outlines examination security provisions to prevent the content of CDA's closed book commercial examinations from being disseminated by any person. Old language stated that an applicant or licensee could not remove examination material, but did not clearly make it a violation if an applicant cheated on the exam by bringing in outside information to reference during the test. New language has been added to make this a violation for any applicant or licensee.

Rule 3.8(a) currently states that an applicant or licensee shall not cause the "nature of" any exam question to be disseminated. It can be argued that any person that has ever taken an exam and then does pre-certification training for his or her company may unavoidably disseminate the "nature of" an exam question. The CDA feels the intent of Rule 3.8 was to prevent blatant dissemination of examination questions. Therefore, the words, "the nature of" were removed to more clearly define that an exam question or answer may not be disseminated to any person.

The private applicator exam is an open book test, which is not currently required to be proctored. Rule 3.8(b), outlines private applicator exam security provisions and was created to address circumstances that have been brought to the CDA's attention that, in some instances, a private applicator has had someone else fill out their test answer sheet (a spouse or family member) or may have attended a workshop where the administrator blatantly gave them the answers to the exam. This Rule is established to make it a violation for any person to disseminate the answers of the private applicator exam to an applicant or licensee or to allow someone other than the applicant or licensee to fill out the examination form.

10) Amend Part 4, Subpart A's title, "General Continuing Education Requirements for Qualified Supervisor and Certified Operator" to clarify that subpart A pertains only to qualified supervisors and certified operators.

11) Amend Part 4, Rule 4.3, to wordsmith the current notification of continuing education workshop provision for clarity and in Rule 4.5 language to clarify that the continuing education provisions must cover topics from subject areas and subtopics outlined in Subparts C through I, in Part 4 of the Rules.

12) Amend Part 4, Subpart B, Rule 4.6 through 4.10, to comply with H.B. 1274, C.R.S. §35-10-116(2) and §35-10-118(5) by adding new language outlining continuing education requirements pertaining to private applicators. Subpart B outlines the number of continuing education credits needed, course approval requirements, course notification provisions, workshop sponsor reporting requirements, and that the continuing education provisions must cover topics from subject areas and subtopics outlined in Subpart C through H, in Part 4 of the Rules.

13) Amend Part 6, Records, of the Rules by the creation of a Subpart A and Subpart B.

Subpart A outlines the current recordkeeping requirements for commercial, registered limited commercial and registered public applicators.

Pursuant to H.B. 1279, C.R.S. 35-10-111, which added recordkeeping requirements for private applicators that use restricted use pesticides (RUP), the CDA has amended Part 6 by creating a Subpart B, Rule 6.05, which requires private applicators to maintain

records of RUP applications, the elements of such records are currently required by the USDA under the Code of Regulations, 7 C.F.R., Part 110 (2006), which C.F.R. is referenced in Rule 6.05. C.R.S. 35-10-111 requires records to be kept for a minimum of 3 years, 1 year more than the USDA requirement, which is noted in Rule 6.05.

14) Part 7; amend Rule 7.02, by changing “licensee” from singular to plural to encompass private applicators. Clarifying statement.

15) Part 7, amend Rule 7.05 by adding language to exempt private applicators from this provision which requires licensed commercial, registered limited commercial, and registered public applicator employees to have a copy of the pesticide label at the site of application in case a question pertaining to the use of product, PPE, precautions, etc. come up during the course of the application. Adding this requirement for private applicators is not needed since all mixing, loading, and use are conducted on the private applicator’s property and the pesticide product label should be on the property site for reference when questions arise.

16) Amend Part 11, with the creation of a new Subpart A and Subpart B to clarify pesticide storage requirements for commercial applicators, registered limited commercial applicators, registered public applicators, and private applicators.

Subpart A, Rules 11.01 through 11.08, is existing language that outlines storage requirements and equipment identification for commercial, registered limited commercial, and registered public applicators.

Subpart B, is new language that is specific to licensed private applicators. H.B. 1274, C.R.S. 35-10-117(1)(i) makes it a violation of the Act to store a pesticide in a manner inconsistent with label directions. Subpart B, Rules 11.09 through 11.11, reiterates this statutory provision, due to the fact that the pesticides licensed private applicators will be storing may be restricted use pesticides, by stressing that pesticides should be stored in a manner as to prevent an unreasonable risk to persons, property or animals, that they are stored in a manor that prevents damage to the container or label, and if stored in an outdoor pesticide storage area that the pesticide is protected from the elements to prevent the risk of damage to the container or label and avoid the creation of an unreasonable risk to persons, property, or animals.

17) H.B. 1239 amended C.R.S. 35-10-112 by expanding the notification of pesticide sensitive individuals to structural pest control operators. Part 12 of the Rules was amended to create a new Subpart A and Subpart B.

Subpart A, Rule 12.06 and 12.07, retains existing language pertaining to turf and ornamental notification requirements.

Subpart B, Rule 12.08 through 12.10, outlines the structural notification requirements for giving prior notice, methods that notice may be given, instructions if notification attempts fail, and emergency and specific product formulations that are exempt from the notification provision, created under H.B. 1239 and allowed under C.R.S. 35-10-112(2)(e) of the Act.

18.11. August 12, 2008 – Effective September 30, 2008

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the “Act”), §§ 35-10-118(2)(a)(b)(c), (4), (5), and (9), C.R.S.

Purpose

The purpose of these proposed rules is to:

1. Amend Rule 2.12 and 2.30 to define adequate supervision by establishing a qualified supervisor to certified operator/technician ratio.

2. Amend Rule 2.32 to clarify that any person who uses any pesticide without supervision while employed by a commercial, registered limited commercial or registered public applicator, must be licensed as a qualified supervisor.

3. Amend Rule 2.49 to clarify that licensed private applicators may only apply restricted use pesticides for the production of an agricultural commodity.

4. Amend Rule 2.59 clarify that an individual licensed in another jurisdiction outside Colorado may become licensed as a private applicator without examination.

5. Amend Rule 9.04 to clarify turf and ornamental notification provisions when making applications to multi-unit residential units when no on-site management person is present.

6. Create a new Rule 15.02 ad 15.03 to clarify that any person using a restricted use pesticide must be licensed as a qualified supervisor, certified operator or a private applicator.

7. Fix typographical errors, including:

   Correct Rule 2.36 by replacing the word “retirements” with “requirements”

   Clarify language in Rule 2.48

   Correct Rule 2.50 by changing the stated date of license renewal eligibility from January 1, 2006, to January 1, 2007

   Clarify Rule 8.04(f) by adding the omitted words “new hire” to the experienced technician language.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1) Rule 2.12 and 2.30 states that if a licensee’s or registrant’s business operation is so extensive that one individual cannot “adequately” supervise all pest control recommendations, soliciting, mixing and loading, and applications of pesticides, more than one qualified supervisor must be employed by the licensee. CDA has historically interpreted this as requiring at least one qualified supervisor for each seven technicians, in order to ensure that s/he has the time and ability to provide the necessary on-site guidance and respond to an accident involving a pesticide spill posing a threat to health or the environment. Under the current Rule, which does not mandate a specific ratio of qualified supervisors to technicians, CDA has observed commercial applicators employing as many as 40 technicians in multiple business locations under the supervision of one qualified supervisor.

   CDA is proposing to amend Rule 2.12 and Rule 2.30 to increase the maximum number of technicians that a qualified supervisor may supervise to fifteen (15), of which no more

than eight (8) may be unlicensed technicians and clearly state that a qualified supervisor must be available while any technician is using a pesticide.

2) The current Rule 2.32 does not clearly state that any person working for a commercial, registered limited commercial or registered public applicator, must be licensed as a qualified supervisor to "use" any pesticide, as defined in Part 1.02(i) of the Rules, without supervision.

3) There have been questions as to the scope of pesticide use authorized under a Private Applicator license. CDA is proposing to amend Rule 2.49 by adding language to clarify that, consistent with EPA's interpretation of FIFRA, it is a violation of the PAA to use a private applicator license to use restricted use pesticides for other purposes than raising an "agricultural commodity," as that term is defined in Rule 1.02(k).

4) Rule 2.59 is the provision that allows qualified out-of-state licensed private applicators to reciprocate their license without having to take the Colorado private applicator exam. As currently phrased, however, this Rule states that a private applicator from another state may "perform" restricted use pesticide applications in Colorado without holding a Colorado license. That conflicts with § 35-10-114.5, C.R.S., which requires any Private Applicator using restricted use pesticides to have a Colorado license. The requirement in Rule 2.59 was intended to be similar to the provision for qualified supervisors and certified operators in Rule 2.48.

   CDA, therefore, is proposing to amend Rule 2.59 to correctly state, "An individual certified or licensed by another jurisdiction outside Colorado as a private applicator may obtain a Colorado private applicator license without passing an examination..." and amend Rule 2.48 to make the language of the two provisions consistent.

5) Rule 9.04 (a) and (b) requires an applicator to leave a written statement at the time of application that a pesticide has been applied stating the pesticide or pesticides applied, the date of application, and any precautionary information for each person residing on the property, and to provide this same written statement to the owner of the site or agent of the owner of the site if s/he is not present. The current rule does not clearly address notification of residents of multi-unit residential dwellings (apartments, condos, townhomes, etc) where there is no property manager on-site.

   CDA is proposing to amend Rule 9.04 to specify the manner in which notification must be provided when making applications at multi-unit dwellings when no on-site management is present at the site.

6) Now that it has jurisdiction over all pesticide use, CDA believes it is useful to clearly state in a new Rule 15.02 that any person using a restricted use pesticide must be licensed as a qualified supervisor, certified operator or a private applicator.

7) Rule 2.36 contains a typographical error. Rule 2.36 currently states, "the Commissioner may waive part of the experience retirements..." The Rule should read, "the Commissioner may waive part of the experience requirements."

8) Rule 2.50 contains a typographical error. Rule 2.50 currently states, "Licenses issued by the Environmental Protection Agency prior to January 1, 2006 cannot be renewed." The Rule should read, "Licenses issued by the Environmental Protection Agency prior to January 1, 2007 cannot be renewed".

9) In promulgating Rule 8.04(f) CDA inadvertently omitted the words "new hire." These words are necessary clarify that the required technician training hours outlined in

8.04(f)(1 – 4) apply to a “new hire” experienced technician, as defined in Part 5, Rule 5.1 (b)(1).

18.12. December 9, 2008 – Effective January 30, 2009

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the “Act”), §§ 35-10-118(2)(b), C.R.S.

Purpose

The purpose of these proposed rules is to:

Amend Rule 15.02 to clarify that any applicator technician may use a restricted use pesticide under the on-site supervision of a qualified supervisor and mix and load a restricted use pesticide under the supervision of a qualified supervisor.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

The Office of Legislative Legal Services review of the Department's recently adopted new Rule 15.02(i), which went into effect on October 1, 2008, determined that the Rule was more restrictive with respect to the supervisory requirements for the mixing and loading of a restricted use pesticide by a technician than the Act itself. The new proposed Rule 15.02(i) eliminates this conflict by distinguishing the mixing and loading of a restricted use pesticide from its actual application.

18.13. October 21, 2010 – Effective November 30, 2010

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the “Act”), §§ 35-10-118(2)(a) & (b), C.R.S.

Purpose

The purpose of these proposed rules is to amend conflicting language between the Rule and statute in regards to sales technicians. All other proposed Rule amendments add clarification to the current interpretation, enforcement and intent of the existing Rules. Specifically:

1) Part 1.02 (f) is amended to add the definition of “pasture”.

2) Part 5.2 is amended to allow sales of a restricted use pesticide “under the supervision” of a qualified supervisor once all required training has been met, in accordance with statute.

3) Part 8.01, agricultural licensure classifications, are being amended to add additional examples of the types of applications allowed in each licensure category.

4) Part 12.06, ornamental notification, is being amended to more clearly explain pesticide sensitive person notification requirements.

5) A new 15.04 is being created to clearly state that a pesticide applicator must hold the appropriate category of licensure to use or supervise the use of a restricted use pesticide.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. The CDA has found that the current licensure category descriptions do not provide a clear explanation of similar geographic areas. To help distinguish between Rangeland and Agricultural pasture areas, a new Part 1.2(f) is being created to add the definition of "pasture" is to help clarify the difference between agricultural applications vs. rangeland applications in Part 8.

2. The current language in Rule Part 5.2, that outlines technician training requirements and the allowed activities of a sales technician, conflicts with the statutory definition of a technician in § 35-10-103(15)(a)(III), C.R.S. The amendment will match the Rule with the statutory definition to allow sales of a restricted use pesticide "under the supervision" of a qualified supervisor once all required training has been met.

3. Agricultural licensure classifications are explained in Part 8.01 of the Rules. The CDA has found that the current licensure category descriptions do not provide a clear explanation of similar geographic areas, therefore making it difficult for an applicator to know what licensure category they must hold. Part 8.01 (f), (g) and (i), which are the Forest Pest Control, Rangeland Pest Control and Industrial and Right-of-Way Pest Control licensure categories have similar geographic and landscape features, but are inherently different based on the site of application and the types of applications occurring in each area. Part 8.01 (f), (g) and (i) are being amended to add additional examples of the types of geographic or landscape features found in each of these categories to provide additional guidance to pesticide applicators on what category they must carry to perform applications in these areas.

4. § 35-10-112(1)(c)(I), C.R.S. and Part 12.06, ornamental notification, currently state that a pesticide sensitive person must be notified of "any" turf or ornamental application occurring to an abutting property. Each separate application, in accordance with § 35-10-111, C.R.S., record-keeping requirements, requires a separate record be kept for each separate application. In situations where two abutting properties are being treated on the same day, the CDA has interpreted that the notification requirement that "any" application would require the applicator to inform the pesticide sensitive person of each separate application taking place. Part 12.06, ornamental notification, is amended to more clearly state that a pesticide applicator must notify the pesticide sensitive person of each and every location where pesticide applications are being made and in a manner that the pesticide sensitive person can identify which abutting property is being treated to take the necessary precautions to avoid adverse effects to themselves or their property.

5. The PAA requires all persons who want to obtain a qualified supervisor, certified operator or private pesticide applicator license to pass an examination and license in the pesticide application category in which they intend to make RUP applications. The PAA also requires that a business must have a qualified supervisor in its employment in the pesticide category(s) it intends to make commercial applications in. The intent in the business and applicator licensure requirements is that the applicator be restricted to use pesticides intended for and perform commercial activities only in the licensure category(s) held. A new Part 15.04 is being created to clearly state that a pesticide applicator must hold the appropriate category of licensure to use or supervise the use of a restricted use pesticide. This amendment will clearly state this rather than having to reference multiple areas of the PAA.

18.14. June 11, 2013 – Effective July 30, 2013

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a) & (b), and (9.5) C.R.S.

Purpose

The purpose of these proposed Rules is to clarify the Rule in regards to solicitations made prior to entering into a contract, create a new Rule to require that a record of active Endangered Species Bulletins be maintained and add a new Rule defining devices that produce a pesticide; which when used for hire require a commercial pesticide applicator license. All other proposed Rule amendments add clarification to the current interpretation, enforcement and intent of the existing Rules. Specifically:

1. Parts 2.15 and 2.16 are amended to clarify when solicitations to subcontract incidental pesticide applications can be made by a business that is not acting as and is not licensed as a commercial applicator.

2. Part 2.60 creates a new Rule defining the Private Applicator category and license purpose.

3. Part 6.03(k) creates a new Rule to require commercial applicators to maintain a record of any active Endangered Species Bulletin.

4. Part 7.05 is amended to clarify what labeling must be in the applicator's possession when applications are being performed and exempt Endangered Species Bulletins from this requirement.

5. Parts 8, 9 and 10 are amended to add the numeric category reference to each pesticide licensure category.

6. Parts 8.01(f),(g) and (h) and Part 10.01 (b) are amended to clarify which pests may be treated under these categories.

7. Part 10.02 is amended to correctly state the licensure category.

8. Part 15.05 creates a new Rule requiring that devices that produce a pesticide, such as carbon monoxide, that when used for hire to control a pest requires a commercial applicator license.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Part 2.15 allows a business that does not apply pesticides for hire to enter into a contract that incidentally requires the application of pesticides as long as there is a written provision in the contract expressly stating that the business will subcontract the application to a licensed applicator. Part 2.16 similarly allows a business that applies pesticides for hire and is licensed as a commercial applicator to subcontract applications that require a qualified supervisor licensed in a category not held by the business's own qualified supervisors, to subcontract the work if the contract expressly discloses that plan. Absent such statements, the Department would consider such contracts to constitute violations of the statutory provision, § 35-10-117(1)(c), C.R.S., which makes it a violation of the Act to present oneself to be qualified to perform or to solicit pesticide related services without a "valid commercial license." The Department realizes that in order to enter into such contracts, businesses must necessarily engage in some form of a solicitation – i.e., they must make an offer to their potential customers, whether oral or written. These amendments to Parts 2.15 and 2.16 clarify that a business proposing to enter into a contract with such a subcontracting provision must also disclose that they will subcontract pesticide applications that require licensure beyond what they hold at the time of the solicitation.

2. Part 2.60 is being created as a result of amendments being made to Parts 8, 9 and 10, to add the numeric categories for all pesticide licensure categories. When creating the language to classify a Private Applicator license as Category 401, the Department felt that stating the purpose of this licensure category would more clearly define what the license may be used for and match the category classification definitions in Parts 8, 9 and 10 of the Rules.

3. Part 6.03(i) creates a new Rule to require commercial applicators to maintain a record of any active Endangered Species Bulletin.

   The Environmental Protection Agency in recent years has added Endangered Species (ES) specific language to certain pesticide labels that require pesticide applicators to obtain and abide by the Endangered Species Protection Bulletin. The requirements in an ES Bulletin are enforceable because compliance is mandated by the label. Therefore, applicators must follow all requirements on the ES Bulletin and failure to do so would be a label violation under both the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA) and the PAA. In addition, as a condition of the EPA enforcement grant CDA is required to verify compliance with all elements of the label. EPA also has specified in our grant that the CDA must determine applicator compliance with the Endangered Species Act by verifying that applicators are referencing the ES Bulletins when required. In 2012 Colorado's first ES Bulletins for Rozol Prairie Dog Bait came into existence and ES Bulletin language is showing up on labels regularly now. The best way for CDA to verify that an applicator has referenced the ES Bulletin and followed all use restrictions for the pesticide, county and month the application was made is to require that the applicator maintain a copy of any active Bulletin that pertains to applications they have made in their records. A record of the Bulletin will only be required to be maintained when there is an active Bulletin for the product, county and month in which the application took place.

4. The intent of Part 7.05 is to require an applicator to have the original or a copy of the original pesticide label and any additional labeling directions in the possession of the applicator at the time of an application so all use directions are available at the job site. Currently Part 7.05 states, "...a copy of the pesticide label and any attached labeling for each product in use shall be in the possession of the commercial…applicator..." The word "attached" no longer represents how labels and labeling may be accessed with new technologies. Labels and labeling are now more likely to be downloaded from the registrant's or EPA's website and maintained electronically. Some products do not have labeling physically "attached" to a product. Therefore, the Department feels that changing the word "attached" to the word "associated" would clearly state the requirement of Part 7.05, which is to have copies of the pesticide label and all of its associated labeling. The word "copies" does not designate or restrict the form or manner in which the label copy must be in the applicator's possession.

   The definition of "labeling" found in the Pesticide Act in relation to the Endangered Species (ES) Bulletins excludes "current official publications" of the EPA. ES Bulletins are publications of EPA that are not created and distributed with the pesticide label. CDA is proposing to add a clarifying statement that, for the purposes of Part 7.05, ES Bulletins are not required to be in the possession of the applicator at the time of the application, since an ES Bulletin is not "labeling". It should be noted, however, that any requirements in an ES Bulletin are enforceable because compliance is mandated the label. Therefore, applicators must still follow all requirements on the ES Bulletin just as any other requirement on the label and failure to do so would be a violation of the PAA. CDA felt clarification is needed in Part 7.05 so applicators understand that although they must have a copy of the label in their possession at the time of application, they are not required to have the ES Bulletin in their possession. CDA is proposing to amend Part 7.05 to clearly state the ES Bulletin is not required to be in the applicator's possession at the time of an application.

5. Parts 8, 9 and 10 are amended to add the numeric category reference to each pesticide licensure category. CDA routinely refers to pesticide applicator licensure categories with a numeric reference in publications, enforcement documents, license documents, examination documents, etc.; i.e.: Category 101, Agricultural Insect Control. CDA is proposing that all licensure category

descriptions in Parts 8, 9 and 10 be amended to reflect the appropriate numeric category reference number to ensure Department publications, administrative documents and enforcement documents legally coincide.

6. Recently the question was brought to the Department's attention, asking if rodents can be treated in rangeland areas with the Rangeland Pest Control Category vs. the Outdoor Vertebrate Control Category. The licensure category description in the Rangeland category is a very broad, stating that this category is for the "application of pesticides to rangeland". Arguably this language would allow the applications of any pesticide, including those applied to rodents in Rangeland areas. However, the Outdoor Vertebrate licensure category clearly states that the Outdoor Vertebrate Pest Control category must be held to apply pesticides to control outdoor vertebrate pests, regardless of the site they inhabit; adding to the confusion.

   The original intent of the Rangeland category was for the application of pesticides to rangeland areas for pests other than rodents, i.e.: weeds, insects, etc. The Outdoor vertebrate category was intended to apply pesticides for the control of vertebrate pests, regardless of the site they may be found (i.e.: water, rangeland, structures, pasture, right-of-way, etc.). During our review, we found this broad statement not only in the Rangeland category but also in the Forestry and Aquatic categories, making the licensure requirements confusing unless the applicator reads the Outdoor Vertebrate licensure category with these other definitions. Even then, it is not clear if the Outdoor Vertebrate Pest Control license would be needed.

   The other licensure categories do have specific descriptions as to what that licensure category does and does not allow. For example:

8.01 (a) Agricultural Insect Control: the application of pesticides to agricultural plants, including applications performed on pastures, croplands and non-crop agricultural lands, to control invertebrate pests, including insects, mites, slugs, snails, and nematodes.

8.01 (j) Public Health Pest Control: the application of pesticides for control of disease vectors, except vertebrates.

9.01 (a) Turf Pest Control: the application of pesticides to: (1) turf to control invertebrate pests, including insects, mites, slugs, snails, and nematodes, or to control plant diseases or weeds; or (2) ornamental beds to control weeds.

   The CDA is proposing that the Rangeland Pest Control and Forest Pest Control category definitions be amended to clearly state that these categories allow the application of pesticides to be applied to control pests "except vertebrates", as similarly stated in the Public Health Pest Control Category.

   During our discussion with the Pesticide Advisory Committee it was pointed out that amphibian and fish pest control is currently under the Outdoor Vertebrate Control category. It was recommended that the Department allow these vertebrate pests to be treated under the Aquatic Pest Control license, since the pesticide applications are being made directly to water. The Department agreed with this reasoning and therefore is proposing to clarify the licensure requirements for controlling vertebrate pests in and out of water in the Part 8.01(h), Aquatic Pest Control and Part 10.01(b), Outdoor Vertebrate Pest Control.

7. CDA recently identified a discrepancy in Part 10.02, which outlines the structural pest control experience requirements for licensure as a qualified supervisor. The current language incorrectly references the Residential/Commercial Pest Control licensure category, found in Rule 10.01 (d), as "household pest control". The Department believes this was an oversight in the terminology when the Rule was originally enacted, since nowhere in the PAA is "household pest control" referenced as a license category. CDA proposes to amend Part 10.02 to remove the reference to

"household pest control" and correctly state the licensure category referenced in Part 10.01(d), Residential/Commercial Pest Control.

8. In FY 2012 it was brought to the attention of the Department that a licensed commercial applicator wanted to use a device, called the Pressurized Exhaust Rodent Control (PERC), to convert gasoline to carbon dioxide (and other gases) and then pump carbon monoxide into a building void (in a strip mall) to treat bird mites and other pests associated with a bird infestation. The PERC is a device intended to only control rodents; it generates carbon monoxide with an attached engine, pressurizes it into a large tank, and the gas is then pumped into rodent burrows. The directions prohibit use on structures and recommend the applicator maintain a 150 ft. buffer from structures.

   Under 35-10-118 (9.5) - Powers and duties of the Commissioner, adopted as a result of the 2006 Sunset review, it states:

   The Commissioner shall designate by rule which devices, when operated for hire, require the operator to be licensed as a commercial applicator. Licensure shall be required only for the use of those devices that, as determined by the Commissioner, may constitute a significant risk to public health or safety.

   Since the CDA does not currently have any devices in Rule designated to require licensure, the CDA has no regulatory authority over individuals using these devices. Therefore, the CDA cannot require licensure when using these devices for hire or take any enforcement action on a commercial applicator when the device is used incorrectly, even when it would cause a risk to the public's health or safety.

   The CDA is proposing the creation of a new Rule 15.05 that requires licensure for the use of any device that generates/produces a pesticide as defined in the Pesticide Applicators' Act § 35-10-103(10), C.R.S., to help ensure public safety, by requiring applicators have the proper training and licensing to use any device for hire that produces a pesticide. In addition, Rule 15.05 requires the applicator to use the device in accordance with the manufacturer's directions.

18.15. February 12, 2014 – Effective March 30, 2014

Statutory Authority

These amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a) & (b), and (9.5), C.R.S.

Purpose

The purpose of these proposed Rules is to clarify the procedures that must be used when operating a device that produces a pesticide, specifically carbon monoxide; which when used for hire requires a Commercial Applicator license. Specifically:

1) Part 1.02 is amended to add the definition of a device that is regulated under this article.

2) Parts 6.01 and 6.03 are amended to reference record keeping requirements for the use of a device that generates a pesticide in Part 15.07 of these Rules.

3) Parts 10.04 and 10.05 are amended to include devices in the post application notification requirements.

4) Part 15.05 is amended and creates new Rules clarifying the pest and sites of application allowed with a device that generates a pesticide.

5) Parts 15.06 (a) and (b) create new Rules that outline the procedures and requirements a Commercial Applicator must follow when making applications within specified distances from occupied structures.

6) Part 15.07 creates a new Rule specifying the records Commercial Applicators that use devices that generate a pesticide must maintain.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1) In FY 2012 it was brought to the attention of the Department that a licensed Commercial Applicator wanted to use a device, called the Pressurized Exhaust Rodent Control (PERC), to convert gasoline to carbon monoxide (and other gases) and then pump carbon monoxide into a building void (in a strip mall) to treat bird mites and other pests associated with a bird infestation. The PERC is a device intended to only control rodents; it generates carbon monoxide with an attached engine, pressurizes it into a large tank, and the gas is then pumped into rodent burrows. The directions prohibit use on structures and recommend the applicator maintain a 150 ft. buffer from structures.

   Section 35-10-118 (9.5), C.R.S., powers and duties of the commissioner, adopted as a result of the 2006 Sunset review, states:

   The commissioner shall designate by rule which devices, when operated for hire, require the operator to be licensed as a commercial applicator. Licensure shall be required only for the use of those devices that, as determined by the commissioner, may constitute a significant risk to public health or safety.

   The CDA passed a new Rule on July 30, 2013, to require licensure for any person that uses any device that generates/produces a pesticide as defined in the Pesticide Applicators' Act § 35-10-103(10), C.R.S., to help ensure public safety by requiring applicators to have the proper training and licensing to use any device for hire that produces a pesticide. This rule also requires commercial applicators to follow label directions for such devices.

2) After the Rule hearing it was brought to the attention of the Department that current device directions may restrict applications around and up to a structure, impacting a Commercial Applicator's business negatively.

3) After the Rule hearing it was brought to the attention of the Department that these devices could be built by an individual and no "directions" would be associated with these devices used for hire, therefore there would be no way to ensure the device would be used in a manner that would not create an unsafe situation for the public.

4) In the normal registration process of a pesticide the Environmental Protection Agency (EPA) assesses the risk of using a pesticide and directs registrants on what labeling use directions or restrictions are needed. EPA only requires manufacturers of devices to register their device with EPA and they register an EPA establishment number. With respect to devices, EPA does not review their efficacy or risk created by their use. Neither does it review or require directions for use to be submitted to or approved by them. Therefore, to ensure public safety, this requirement fell on the Department and necessitated the development of these Rules.

5) The Department obtained input from USDA and the Colorado Department of Public Health and Environment (CDPHE) when creating this Rule. CDPHE generated modeling data showing the potential amount of carbon monoxide that could leak into a structure. This data showed that in

certain circumstances carbon monoxide levels could rise to deadly levels within minutes and create a situation where adverse impacts to health and safety were possible, including death.

6) Part 1.02 (m) was created to define devices for which licensure is required and link their definition to “pesticides”. This allowed all PAA licensure and business requirements for the use of a pesticide for hire to be extended to devices being used for hire where applicable.

7) Parts 6.01 and 6.03 were amended to clarify that recordkeeping requirements pertaining to the use of a device that requires licensure are outlined in Part 15.07 of the Rule.

8) Parts 10.04 and 10.05 were amended to address customer notification requirements for the use of devices that require licensure. The Rule now requires licensees using a device requiring licensure to meet similar notification requirements to the customer as for other pesticide applications, including providing the date and time of application and any precautionary statements from the device directions.

9) Part 15.05 was amended to clarify that it is a violation to use a device that generates a pesticide in a manner inconsistent with these Rules. It requires that these devices may only be used for burrowing rodent control and that the Commissioner may approve other uses if the Commissioner can determine that such use will not pose a risk to the public health or safety.

10) Part 15.06 was created to allow device applications up to the foundation of occupied structures. Part 15.06 (a) specifies the distances within which additional precautions must be taken. The additional precautions outlined in 15.06(b) are intended to ensure that occupants of structures will not be exposed to carbon monoxide in situations where carbon monoxide accidentally leaks into a structure. The precautions include evacuating the structure and require the applicator to “clear” the structure with a carbon monoxide monitoring device prior to allowing any occupants back into the structure. Part 15.06(b) also requires information be provided to the customer on carbon monoxide poisoning symptoms and directions to evacuate and seek medical attention, should they have symptoms following the application.

11) Part 15.07 was created to require recordkeeping of device applications. These recordkeeping requirements will allow the Department to investigate the proper use of a device in the case of a complaint and to ensure applicators are complying with the application precautions and requirements outlined in Part 15.06.

18.16. Adopted November 10, 2015 – Effective December 30, 2015.

Statutory Authority

These amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the “Act”), §§ 35-10-109(2) and 35-10-118(2), C.R.S.

Purpose

The purpose of these proposed Rules is to adopt new Rules to: (1) meet the requirements of training specified in SB 15-119; (2) re-define commercial business locations; (3) create a new Post Harvest Potato Pest Control licensure category; (4) allow for electronic notification of pesticide applications and; (5) make necessary conforming language changes. Specifically:

(1) Rule 1.02 is amended to add the definition of a “ready to use pesticide”.

(2) Rule 5 is amended to fix a typographical error from previous Rules.

(3) Rule 5.02 is amended to clarify that the technician training required in Rule 5.02 does not apply to non-registered limited commercial applicator and non-registered public applicators.

(4) Rule 10.01 is amended to create a new Post Harvest Potato Pest Control category and provides for the award of the category for existing licensees holding the Stored Commodities Treatment category and for licensure and renewal requirements after January 1, 2016.

(5) Parts 8, 9 and 10 are amended to allow for electronic notification of pesticide applications.

(6) Part 11 is amended to correctly state new terminology regarding “safety data sheets”.

(7) Update address of the Department.

(8) Create a new Part 16 to address training requirements as a result of SB 15-119 for non-registered limited commercial applicators and non-registered public applicators. This Part outlines what training is required for the use of certain general use pesticides, when training is required, how training can be met and recordkeeping requirements.

(9) These amendments incorporate changes as a result of the Department’s Regulatory Efficiency Review Process.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

(1) The current Stored Commodities Treatment category focuses on the fumigation and treatment of raw grains in storage facilities; such as silos and grain bins. It was brought to the Department’s attention that post-harvest potato treatments, which have been conducted under the current Stored Commodities category since the 90’s, are significantly different in the equipment required and knowledge needed to conduct these specialized pesticide applications. The Department verified this and in the course of considering this licensure category found several other states that have significant potato agricultural industries have a specific post-harvest potato treatment licensure category. Since the Department’s current Stored Commodities Treatment category does not adequately address post-harvest potato treatments and due to the complexity and knowledge needed to perform these applications, the Department is proposing this new licensure category. The study guide and exam was done in cooperation with post-harvest potato treatment applicators.

(2) The proposed Rule 10.01 (h) will provide for licensees with the current Stored Commodities treatment category to be awarded the Post-Harvest Potato Treatment category, because under the Stored Commodities category they were already allowed to perform these applications prior to the creation of this new licensure category, and outlines the time frames when examination, continuing education and renewal are required.

(3) The Department was approached by industry to consider a Rule change to allow required notices of pesticide applications outlined in Rules 8.03, 9.04 and 10.06 to be provided electronically to their customers. As technology has evolved more commercial applicator customers request that these notices of pesticide applications be sent via electronic means, rather than posting a written paper notification on a door that they may never enter. The proposed Rules in 8.03, 9.04 and 10.06 provide a means for commercial applicators to confirm and maintain a record that their customer has requested an electronic notice and clarifies the circumstances when an electronic notice can and cannot be used in place of written notification.

(4) Rule 10.07 is a new Rule addressing notification in multi-unit structures when common areas have been treated, which had previously not clearly required posting. The Department added this

additional clarification due to on-going complaints that structural applications made to common areas are not adequately communicated to persons living in the structure who must pass through these areas to gain entry to their unit.

(5) As a result of SB 15-119, a new Part 16 has been created to address the new training requirements for any owner or designee of a non-registered limited commercial applicator and any employee of a non-registered public applicator making applications with a general use pesticide. During the Department's discussions with the Department of Regulatory Agencies, this recommendation was made to address concerns expressed during the Pesticide Applicator Act Sunset review by those that felt that a higher level of training should be required for non-registered limited commercial and non-registered public applicators that make similar pesticide applications as those made by commercial applicators and who are held to a higher standard of training and knowledge. Additional training for individuals making pesticide applications in areas that are considered "sensitive sites", such as schools and health care facilities, were a concern as well. The Department took into consideration comments received from industry and during the legislative session that antimicrobial pesticides, i.e.: cleaning products, or those that were packaged in a ready to use containers that do not require mixing or loading of the pesticide into separate containers and limit the user to smaller quantities that limit potential exposures to the end user or public were beyond the scope of pesticide use that should require this additional training.

(6) The Department is proposing the following new Rules to address SB 15-119. Rule 1.02(i) provides the definition of a "ready to use" pesticide. Rule 16.01 outlines the scope of whom this Rule applies to. Rule 16.02 clarifies what general use pesticides require training to use. Rule 16.03 clarifies what general use pesticides do and do not require training. Rule 16.04 outlines what core pesticide safety training subjects must be covered and the manner in which the training may be met. Rule 16.05 clarifies how often the training must be conducted and Rule 16.06 outlines how long records of the training must be maintained.

(7) The Rules are being amended to address typographical errors, make conforming language changes and update verbiage to current regulatory references.

18.17. Adopted February 10, 2016-Effective March 30, 2016

Statutory Authority

Amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Applicators' Act ("PAA") Sections 35-10-118(2), 35-10-117(1)(i) and 35-10-117(2)(a), C.R.S.

Purpose

The purpose of these Rules is to establish the criteria for determining which pesticides may be used in the cultivation of cannabis to prevent unsafe use. They also change the recordkeeping period for Private Applicators. Specifically these Rules:

(1) Create a new Part 17 which specifically addresses the use of pesticides in the production of cannabis;

(2) Create a new Rule 17.01 which establishes definitions specific to "cannabis", "human consumption", and "tolerances";

(3) Create a new Rule 17.02 which provides that the Department will publish the list of pesticides that meet the criteria for use on cannabis;

(4) Create a new Rule 17.03 which provides that all pesticides used in the cultivation of cannabis must be registered with the Department;

(5) Create a new Rule 17.04 which establishes the criteria for determining which pesticides may be legally used in the cultivation of cannabis in accordance with Sections 35-10-117(1)(i) and (2)(a), C.R.S., which prohibits the use of pesticides in an unsafe manner;

(6) Create a new Rule 17.05 which allows the Commissioner to prohibit the use of any pesticide product on cannabis if he determines that such use may pose a significant threat to public health and safety or the environment, even though it otherwise satisfies the criteria for use on cannabis in Rule 17.04; and

(7) Update Rule 6.05 to match the two year private applicator recordkeeping requirement in the PAA.

Factual Policy and Issues

The factual policy and issues encountered when developing these Rules include:

(1) The use of pesticides in Colorado is regulated under the Pesticide Applicators' Act, Sections 35-10-101 – 128, C.R.S. Pesticide regulation is based on the labeling of the pesticide product, the language of which is enforceable under the PAA. Because cannabis is not a specifically listed crop on any label currently registered with the Department, products with broad label statements that do not prohibit use on cannabis are currently the only ones that may be used legally on cannabis in Colorado.

(2) These Rules and criteria are being established to allow the use of certain pesticides in the cultivation of cannabis based on the available science and information the Department can confirm at this time. Without these Rules and the criteria they set out, the use of a pesticide that has not had a tolerance established for use on edibles (food), or the use of a pesticide that is not intended to be consumed through inhalation by smoking, could be allowed on cannabis by a broadly worded label, even though such use would be "unsafe" under Sections 35-10-117(1)(i) and (2)(a, C.R.S.

(3) Both the PAA and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) require that all pesticides be applied in strict accordance with the label directions for the particular product. As part of the directions for use, pesticide labels specify the particular crops and/or sites to which they can be applied. Depending on the particular pesticide, the crops/sites listed on the label can be expressed very specifically (e.g., "wheat"), or more generally (e.g., "grain crops"). While a pesticide with a label that specifies "wheat" can only be applied to wheat, a pesticide that lists "grain crops" on the label can be applied to wheat, barley, oats, rye, etc. In determining which pesticides, if any, may be used legally on cannabis, CDA initially consulted with the U.S. Environmental Protection Agency (EPA) as to whether there might be any general crop groups, such as herbs, spices or vegetable gardens, into which cannabis might fit (note: there are no registered pesticides that specifically list cannabis as a crop on the label). The current position of EPA is that cannabis is not an herb, a spice or a vegetable. However, EPA agrees that, depending on actual label language, it is not a violation of a pesticide label under the PAA or FIFRA to use the product on cannabis if it has certain, very generally worded descriptions of crops/sites on the label, and the product's active ingredient is exempted from the requirement of a tolerance.

(4) Tolerances are established by EPA in accordance with the Federal Food and Drug Cosmetic Act, U.S.C. Title 21, Section 408. A tolerance is the maximum amount of the active ingredient of a pesticide product that is allowed to remain in or on a food crop as

residue after application of the product. Pesticide products that have significant toxicity, which could pose a hazard to public health if threshold amounts are exceeded when consumed and could result in acute or chronic poisoning, are required to have tolerances established by EPA. Tolerances for a given active ingredient typically vary depending on the specific food crop to which it is applied. EPA sets tolerances by determining that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residues at the tolerance levels established, including all anticipated dietary exposures. Exemptions from tolerances are established under 40 CFR, Part 180, Subpart D: 180.900: "… An exemption from a tolerance shall be granted when it appears that the total quantity of the pesticide chemical in or on all raw agricultural commodities for which it is useful under conditions of use currently prevailing or proposed will involve no hazard to the public health."

(5) Section 3 of FIFRA provides EPA the authority and 40 C.F.R., Parts 150-167, outline the requirements to register a pesticide with EPA. Pesticide labeling is derived through EPA's risk assessments required to be conducted as a condition of registration that determine the manner and rates of application in which a pesticide may be used on a site or a crop without resulting in adverse impacts to public health or the environment. To date no risk assessments have been conducted specifically for pesticide use on marijuana.

(6) Risk assessments have been conducted to determine what pesticide active ingredients are tolerance exempt. EPA has determined that for those active ingredients determined to be tolerance exempt, "…the total quantity of the pesticide chemical in or on all raw agricultural commodities…will involve no hazard to the public health."

(7) EPA requires that a pyrolysis study be conducted during the risk assessment process for products intended to be smoked such as tobacco, unless EPA has exempted the pesticide from pyrolysis studies due to the nature of the pesticide.

(8) The Colorado Food and Drug Act (CFDA) provides the Colorado Department of Public Health and Environment (CDPHE) with authority over cannabis contaminated with pesticide residues ("adulterated" under the CFDA) that is very similar to the authority used by the Food and Drug Administration to deal with pesticide contamination of all other agricultural crops. The CFDA gives CDPHE specific authority over "unsafe" "pesticide chemicals" in "raw agricultural commodities," the definition of which is broad enough to include cannabis which is grown, harvested and then processed and sold for consumption through various means, including ingestion as a component of food (in edibles).

Under the CFDA, "food" is defined to mean "articles used for food or drink for man or other animals…and articles used for components of any such article." C.R.S. § 25-5-402(11). "Food" includes any "raw agricultural commodity," which is "any food in its raw or natural state…." C.R.S. § 25-5-402(21). Cannabis, which is grown and used as a component in many forms of edible food products, thus qualifies as a raw agricultural commodity under the CFDA. Although not all cannabis is used in edibles ("food" under the CFDA) cannabis can be used for any purpose after harvest, including food use, thus warranting treatment of all cannabis crops as a food for pesticide regulation purposes. Under Section 25-5-410(1)(b)(II) of the CFDA, "a raw agricultural commodity" is "deemed to be adulterated" if "it bears or contains a pesticide chemical which is unsafe within the meaning of Section 25-4-413(1)" unless the concentration of the residue is less than the tolerance set for the commodity or is tolerance exempt as provided for in Section 25-5-413(1). Section 25-5-413(1) in turn states that, "[a]ny pesticide chemical in or on a raw agricultural commodity…shall be deemed unsafe for the purpose of application of Section 25-5-401(1)(b)" unless there is a tolerance established for that crop and the residue level is within that tolerance. Thus unless a pesticide found on a cannabis crop has a tolerance for use on cannabis or is tolerance exempt, its presence in any amount on cannabis

constitutes adulteration that renders the cannabis unsafe for human consumption under the CFDA as a matter of law. These Rules reflect and follow the General Assembly's determination in the CFDA that consumption of food containing pesticides without a tolerance or exemption is unsafe. The Rules thus prohibit the application of such pesticides to cannabis as similarly unsafe as under the PAA in order to prevent adulteration from pesticides as addressed in the CFDA from occurring.

This approach for regulating pesticide use in order to prevent contamination of cannabis is the same as EPA and CDA apply to any other multipurpose-purpose agricultural commodity that can be used in food after harvest. It reflects the fact that neither EPA nor CDA have any way of knowing or controlling what a grower of such crop chooses to do with the crop once harvested. For example, under EPA's registration system, any pesticide labeled for use on cotton, which once harvested can be used for both fiber and food (in the form of cotton oil), must have a tolerance established and be labeled for food use even though the particular cotton crop to which it is applied in the field may not ultimately be used as food.

(9) Depending on how it is processed and sold after harvest, cannabis may be consumed through inhalation (smoking), ingestion (eating) and through dermal exposures (creams and lotions applied topically). Due to the lack of specific risk assessments or tolerances for use of any pesticides specifically on cannabis CDA, in accordance with the CFDA, has determined that it is unsafe to apply any pesticide to cannabis that requires a tolerance for applications to raw commodities or that is not approved for use on tobacco.

The heightened safety concern created by the multiple ways in which cannabis is consumed was highlighted recently by the marijuana industry's widespread use of a product called Eagle 20 which contains the active ingredient myclobutanil. In a May 2015 lawsuit against the City of Denver and CDA challenging the City's hold orders preventing the sale of marijuana on which myclobutanil was found, a marijuana grower argued that myclobutanil was safe to ingest and smoke. Because no risk assessments had been conducted specifically for the use of myclobutanil on marijuana and no tolerances for such use were established, the City and CDA argued that it was unsafe to use myclobutanil on marijuana. Although the judge ruled in the City's and CDA's favor and sustained the hold orders, based on the scientific information available at that time and presented to the court, the judge stated in his ruling that, "The evidence at the hearing strongly suggests that myclobutanil is likely safe for use on marijuana and that the levels of myclobutanil found on the Plaintiff's marijuana would not constitute a health threat to those who ingest it, either through eating or smoking".

Only a month later, in June 2015, Frank Conrad, the Lab Director of Colorado Green Lab, confirmed the City's and CDA's concerns when he analyzed the known chemical and physical properties of myclobutanil and reported in his paper, "Eagle 20 and Myclobutanil in the Context of Cannabis Cultivation and Consumption," that when heated above 205 degrees Celsius (cigarette lighters burn at 450 degrees Celsius) myclobutanil forms hydrogen cyanide (HCN). Conrad's paper points out that HCN is known to cause serious neurological, respiratory, cardiovascular, and thyroid problems and that cannabis retaining even marginal amounts of myclobutanil (ex. 0.03 ppm) could potentially expose consumers to non-lethal, but clinically relevant levels of HCN. This illustrates the potential danger of using a pesticide on cannabis that does not meet the criteria established in these Rules, including tolerance exemption of all active ingredients and EPA approval of use on tobacco (which is consumed through inhalation).

(10) CDA has identified certain pesticide products whose use on cannabis would not constitute a violation of the label due to the very general use statements on the label. In addition, because the active ingredient(s) of these pesticide products are exempt from a tolerance requirement they in most cases provide for use on crops that may be

consumed. However, broad labeling and a tolerance exemption for food use does not necessarily mean the active ingredient was tested or approved for use on products to be smoked, such as tobacco. Since cannabis may also be consumed by smoking, any pesticide product allowed for use on cannabis must also have active ingredients that are approved for use on tobacco to ensure EPA has considered use on commodities intended to be smoked in their risk assessment.

(11) CDA is proposing that the only pesticides allowed for use on cannabis be those registered with CDA in accordance with Title 35, Article 9, C.R.S. This will prevent the application of "home-made" pesticide concoctions containing active ingredients that may be unknown and could pose a serious health risk to the applicator and end user if consumed. This will also ensure that any pesticide product applied to cannabis has had a risk assessment conducted to determine allowed uses.

(12) These Rules set forth the specific criteria, which if met, will prevent the use of pesticides for the cultivation of cannabis in an unsafe manner that would violate Sections 35-10-117(1)(i) and (2)(a) C.R.S.. Section 3 registered pesticide products may be used on cannabis if:

(a) The active ingredients have been determined to be tolerance exempt from the requirements of a tolerance, as established under 40 C.F.R. Part 180, Subparts D and E. EPA has established in the risk assessment process that these products are of lowest toxicity and therefore do not require tolerances to be established for use on raw commodities.

(b) The label has broad language that allows the use of the pesticide on the site of application. The term "site" includes all sites of application, including interior, exterior sites, structures in which application may be made, as well as the actual plant or crop.

(c) The pesticide product label expressly allows use on crops intended for human consumption. This is intended to prevent the use of pesticides on cannabis that although broadly labeled, are not tested or intended for use on food crops.

(d) The pesticide's active ingredients must be allowed by EPA for use on tobacco. Pesticide products may contain active ingredients that have had risk assessments conducted for consumption in food, but those active ingredients may not have been tested or intended to be burned and inhaled. Requiring that all active ingredients in pesticides used on cannabis have EPA-allowed uses on tobacco, will ensure that EPA has considered this in their risk assessment process.

(e) Some pesticide products may meet all of the required criteria except being expressly labeled for food use due to marketing toward other markets. Nevertheless, if CDA can verify with the manufacturer that the product's master label allows food uses and that all of the active and inert ingredients are allowed for use on food crops and tobacco, CDA through this Rule will have the authority to allow the product's use on cannabis.

(13) Under the authority of Section 24(c) of FIFRA, states may register an additional use of a federally registered pesticide product, or a new end use product, to meet special local needs. EPA reviews these registrations, and may disapprove the state registration if, among other things, the use is not covered by necessary tolerances, or the use has been previously denied, disapproved, suspended or canceled by the Administrator, or voluntarily canceled subsequent to a notice concerning health or environmental concerns.

These Rules will allow the use of pesticide products on cannabis that have gone through the 24(c) registration process. The 24(c) process will require additional data submission specifically to address use on cannabis, including residue studies and considerations for extracts as well as submission of specific use instructions for use on cannabis. EPA will review this information and deny the registration if it does not support the use.

(14) EPA has determined that certain “minimum risk pesticides,” commonly referred to as “25(b) pesticides,” pose little to no risk to human health or the environment. EPA has exempted them from the requirement that they be registered under FIFRA. These products must still be registered with CDA and meet minimum FIFRA standards for labeling requirements and claims.

There may be some 25(b) products that the manufacturer did not intend to allow end users to consume. The Rule will only allow the use of 25(b) minimum risk pesticide products on cannabis if the pesticide labeling allows use on crops or plants intended for human consumption.

(15) The Rules will allow the Commissioner to prohibit the use of any pesticide that he determines could pose a threat to public health and safety or the environment, even if it otherwise meets the Rules’ criteria. Pesticide use on cannabis is a newly regulated area of agriculture and new information is coming to light daily. This will give CDA the means to stop the use of any previously approved pesticide when new information or science establishes that such use would be unsafe.

(16) Applying the criteria in the Rules to the more than 12,000 pesticides currently registered with the State of Colorado, CDA has determined that there are less than two hundred pesticides that can be legally used in the cultivation of cannabis. In order to inform cannabis growers which pesticides are available to them, CDA has created a list of pesticides that can be legally used. This list will be published on CDA’s website and updated as needed.

(17) As a result of SB15-119 the Private Applicator recordkeeping requirement was changed from three years to two years, to match the federal recordkeeping requirement. This change to Rule 6.05 will make the Rule consistent with the PAA.

18.18. Adopted September 20, 2017- Effective November 30, 2017

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the “Act”), §§ 35-10-118(2)(a) and (b), C.R.S.

Purpose

The purpose of these Rules is to add a new Post Harvest Potato Pest Control category; amend the criteria for determining which pesticides may be used in the cultivation of Cannabis to allow for the use of unregistered pesticides during research and demonstration activities only; to update commercial applicator storage signage requirements; and to make conforming changes to clarify existing Rules. Specifically, these Rules:

1. Correct typographical errors and references.

2. Amend Rules 5.25, 5.26, 5.27, 5.28 and 10.03 to add the new Post Harvest Potato Pest Control category.

3. Amend 8.01(g) to make the “turf” reference consistent throughout this Part 8.

4. Amend Rule 11.05 to provide a more flexible manner in which commercial applicators must post signs notifying employees, first responders, and other parties of the presence of pesticides in pesticide storage areas.

5. Amend Rule 17.03 to allow the use of unregistered pesticides in the cultivation of Cannabis for research and demonstration purposes only.

Factual and Policy Issues

1. Clarify which part of Rule 5.01 outlines the required training and experience to meet the qualifications of a New Hire Experienced Technician.

2. On December 30, 2015, a new licensure category, the Post-Harvest Potato Pest Control category (i.e., Category 308), was created. Prior to the creation of this licensure category, post-harvest potato pest control pesticide applications were performed under the Stored Commodities Treatment category (i.e., Category 305). Rules 5.25, 5.26, 5.27, 5.28 and 10.03 outline the technician training requirements and experience required to obtain a Qualified Supervisor’s license in the Stored Commodities Treatment category. To address the technician training and licensure experience requirements for the Post-Harvest Potato Pest Control category, the Department proposes to update Rules 5.25, 5.26, 5.27, 5.28 and 10.03 to add the Post-Harvest Potato Pest Control category so that the training and experience requirements are the same for this category as for its parent category.

3. The Turf Pest Control category and the Ornamental Pest Control category fall under the broad definition of “ornamental” applications. The Rangeland Pest Control category defines sites of applications for this licensure category and requirements that applicators who make applications in a forested area that is within fifty feet of a residence or commercial structure also comply with the posting and notification requirements in the Turf Pest Control category. Rule 8.01(g) currently references the Turf Pest Control requirement and uses the general “ornamental” term. To clarify the rule requirement, the Department proposes to reference the Turf Pest Control category throughout.

4. Rule 11.05 sets forth that warning signs are required for pesticide storage areas or entrances thereto. The current Rule has specific verbiage which pesticide storage signs must meet. When this Rule was originally created, applicators could purchase signs with this exact verbiage. However, pesticide storage signs currently available for sale no longer contain the required language in the PAA. Because the Rule states that pesticide storage signs “shall” be marked with the specific verbiage used in the Rule, companies must now create their own pesticide storage signs to be in compliance with the Rule. The Department wants to amend Rule 11.05 to permit the use of other types of standardized pesticide storage signage, while maintaining the emergency contact information requirement and storage marking provisions already contained in the Rule, as well as requiring that any applicator who obtains a waiver of this sign requirement from a local fire department maintain a copy of that waiver in the applicator’s files for Department review.

5. On March 30, 2016, the Department passed Rules that outlined the criteria for which pesticides may be applied in the cultivation of Cannabis. Specifically, Rule 17.03 limited the use of pesticides in the cultivation of Cannabis to registered pesticides only. In May 2017, HB 1367 was passed to allow marijuana cultivators and other persons to conduct research and demonstration activities related to pesticide use on marijuana. Research and demonstration activities are for the purpose of developing data on currently unregistered pesticides or pesticides that are not registered for a specific use. The Department proposes to amend Rule 17.03 to allow the use of unregistered pesticides in the cultivation of Cannabis for research and demonstration purposes in accordance with the intent of HB 1367 and 40 CFR Part 172.

18.19. Adopted February 22, 2018 – Effective April 15, 2018

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a) and (b), C.R.S.

Purpose

The purpose of these Rules is to incorporate federal statutory provisions by reference pursuant to § 24-4-103(12.5)(a), C.R.S. Specifically, these Rules:

1. Amend the title to Part 1 of the Rule to include "Incorporations by Reference."

2. Amend Part 1 by adding a new Rule 1.03 to address the incorporation by reference provisions.

3. Amend Rules 2.28, 6.05, 11.08, 17.03, 17.04(a)(1), 17.04(b)(1), and 17.04(d) by updating the references to the Code of Federal Regulations ("C.F.R.") to include the date of the effective edition and by removing repetitive incorporation statements.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. On September 20, 2017, the Commissioner of Agriculture adopted Rules to allow Research and Demonstration uses of unregistered pesticides for the cultivation of Cannabis. In this Rule the Department referenced the C.F.R.

2. On November 6, 2017, the Department was notified by the Office of Legislative Legal Services that the Department's C.F.R. references incorporated into Rule did not comply with the requirements of § 24-4-103(12.5)(a), C.R.S.

3. The proposed Rule changes amend the title of Part 1 to add "Incorporations by Reference" and add a new Rule 1.03 to meet required provisions to incorporate by reference set forth in § 24-4-103 (12.5)(a), C.R.S.

4. Rules 2.28, 6.05, 11.08, 17.03, 17.04(a)(1), 17.04(b)(1), and 17.04(d) are amended to update the C.F.R. edition date to meet required provisions of incorporation by reference as set forth in § 24-4-103 (12.5)(a), C.R.S.

5. Rule 11.08 was amended to remove the existing incorporation language that is now redundant to Rule 1.03.

18.20. Adopted November 15, 2019 – Effective December 30, 2019

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to her authority under the Pesticide Applicators' Act ("Act"), specifically §§ 35-10-118(2)(b).

Purpose

The purpose of these proposed amendments is to:

Amend Part 1 and Part 10 of the Rules Pertaining to the Administration and Enforcement of the Pesticide Applicators' Act (the "Rule") to address new landlord and tenant bed bug reporting requirements created by House Bill 19-1328.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Pursuant to section 35-10-118(2)(b), C.R.S., the commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to: the establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article.

2. During the 2019 legislative session, the Colorado General Assembly adopted HB 19-1328, effective January 1, 2020. HB 19-1328 amended Title 38, Article 12, Tenants and Landlords, concerning bed bugs in residential premises and established a requirement for commercial pesticide applicators to notify landlords and tenants of bed bug activity and provide remediation instructions.

3. Notification provisions created in HB 19-1328 expressly state that notification and reporting will be in accordance with rules established by the commissioner pursuant to Title 35, Article 10.

4. Part 1, Definitions; of the Rules associated with the Act is amended to add definitions established in HB 19-1328 to include "Contiguous Dwelling Unit," "Dwelling Unit," "Landlord," and "Tenant" to ensure clarity in the new rules established in Part 10.

5. Part 10, Structural Applicators; of the Rules associated with the Act is amended to add new Parts 10.08(a) and (b) to establish what bed bug activity must be reported to the landlord and what remediation recommendations must be provided to the tenant.

6. A new Part 10.08(c) is created to require that the structural applicator who makes the report to a landlord retain a record of the report for three years.

18.21. Adopted December 8, 2021 – Effective January 30, 2022

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("Department") pursuant to the Commissioner's authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a), (b), (c), (d), (3)(a), (4), (5) and (9) C.R.S.

Purpose

The purpose of these Rules is to incorporate new federal certification and training requirements pursuant to 40 C.F.R. Part 171 and to clarify existing Rule requirements. Specifically, the revisions to the Rules:

1. Update Part 1.02(j) to reflect that Article 36 of Title 12, C.R.S., was renumbered in 2019 and now exists at Article 240;

2. Amend Part 1.03 to incorporate by reference additional provisions from the Code of Federal Regulations;

3. Repeal Parts 2.05.5 and 2.38 consistent with Senate Bill 21-077 (Remove Lawful Presence Verification Credentialing);

4. Amend Parts 2.09 and 2.11 to clarify how applicants provide insurance information to the Department;

5. Create Parts 2.12(c) and (d) and 2.30(c) and (d) to clarify the meaning of adequate supervision by qualified supervisors;

6. Amend Part 2.34 and 2.50 to clarify qualified supervisor/certified operator and private applicator application requirements, respectively, including information on the age and date of birth of the applicant;

7. Amend Part 2.40 to clarify that qualified supervisors may only provide supervision in the licensure category or categories that he or she holds;

8. Amend Part 3.01 to adopt certification standards that meet or exceed federal standards for commercial and private applicators;

9. Amend Parts 4.01, 4.02, 4.04, 4.07 and 4.09 to clarify and update the process for submission of continuing education courses to the Department in a manner that meets federal recertification requirements in 40 C.F.R. § 171.107(b)(2)(iii);

10. Amend Parts 4.05 and 4.10 to clarify the requirements for approval or denial of continuing education courses;

11. Amend Part 5.02(h) to clarify that all training records must be recorded on forms provided by the Department and that those forms must be completed in full in order for a commercial, registered limited commercial, or registered public applicator to comply with the Department's Rules;

12. Create Part 5.02(k) to comport certification and training requirements for technicians with new federal requirements at 40 C.F.R. § 171.201(d);

13. Create Part 5.02(l) requiring licensed or registered applicators to obtain training records for certain new technicians when those new technicians are hired and to maintain those records consistent with the Rules;

14. Create Part 5.02(m) establishing record retention and record sharing requirements, as well as identifying the records to which those requirements apply;

15. Amend Part 6.03(j) to include the license number as information that must be included on application records;

16. Create Part 7.01(a) to define the term "company business name" as that term appears in Parts 7.01(b) and (c);

17. Create Parts 8.03(f) and 9.04(e) to cross-reference notification and signage requirements appearing in Parts 12 and 13 of the Rules;

18. Amend Part 9.01(a) to clarify sites of application allowed under Category 206, Turf Pest Control;

19. Update Part 13.01 to cross-reference statutory requirements for notification at § 35-10-112(c), C.R.S.;

20. Update Part 13.02 to clarify that signage height requirements do not apply to notices required to be placed in a golf course clubhouses;

21. Update Part 13.04 to clarify notice requirements for gold course clubhouses;

22. Create Part 15.02(c) to adopt private applicator supervision standards that meet or exceed federal standards;

23. Amend Part 17.03 to clarify when existing stocks of certain pesticide products may be used after the product becomes unregistered;

24. Amend Part 17.04 to clarify that no person may use pesticide products on Cannabis if those pesticide products do not meet the conditions specified in Rule; and

25. Correct non-substantive typographical, formatting, and grammatical errors throughout the Rules.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. Article 36 of Title 12, C.R.S., was renumbered in 2019 and now exists at Article 240. Part 1.02(j) was updated to reflect the correct statutory provision

2. When an agency incorporates material by reference in its Rules, it must comply with § 24-4-103(12.5)(a), C.R.S. Various edits to these Rules reflect those requirements.

3. On May 27, 2021, Governor Jared Polis signed Senate Bill 21-077 into law. SB21-077 repealed requirements at § 24-34-107, C.R.S., that required individuals applying for licenses with the Department to provide evidence of lawful presence in the United States. As a result, the Department is repealing Parts 2.05.5 and 2.38 concerning the requirement to establish lawful presence as a condition of licensure.

4. Parts 2.09 and 2.11 concern requirements that applicants for licensure provide proof of insurance on a form provided by the Commissioner. However, over the past decade, insurance providers have expressed concern over the language in the Department's form. This causes delay in processing applications. The Department is aware that the information it requests is often covered by industry forms, such as the ACORD form. Therefore, the Department is revising Parts 2.09 and 2.11 to provide flexibility to applicants and to allow the Department to accept standard forms, including the ACORD form, issued by insurance carriers.

5. Part 2.12 of the Rules, concerning adequate supervision of technicians by a qualified supervisor, was last reviewed in 2008. Since then, the pesticide applicator industry has evolved, such that a qualified supervisor is often employed by more than one commercial applicator business. This has caused confusion in the industry concerning the number of technicians that can be supervised by one qualified supervisor, especially when that qualified supervisor is linked to multiple commercial applicator businesses. The new Parts 2.12(c) and (d) clarify and confirm that a qualified supervisor may supervise one or more technicians employed by multiple commercial applicator businesses, so long as the aggregate number of technicians supervised never exceeds 15 at any one time.

6. On January 4, 2017, the U.S. Environmental Protection Agency published revised certification standards for pesticide applicators (82 Fed. Reg. 952), which standards became effective on March 6, 2017. To comply with these new federal standards, the Department must promulgate and revise its rules pertaining to certification and training of pesticide applicators consistent with the revised State Certification Plan submitted to EPA on March 6, 2020. Therefore, the Department is revising Parts 2.34 and 2.50 of the Rules to reflect requirements in 40 C.F.R. §§ 171.103(a)(1) and 171.105(g), specifically adopting a minimum age requirement for commercial and private applicator certification of at least 18 years old.

7. Over the past few years, there has been some confusion surrounding the types of activity that a qualified supervisor may supervise. Therefore, the Department is revising Part 2.40 to make clear that a qualified supervisor is only responsible for (and can only provide) supervision in the specific categories of licensure that he or she holds.

8. As described above, EPA revised its federal standards for the certification and training of licensed pesticide applicators in 2017. States must adopt certification standards that meet or exceed these federal standards. Therefore, the Department is amending Part 3.01 to require compliance with federal certification standards set forth in 40 C.F.R. §§ 171.103 and 105 for commercial and private applicators.

9. Colorado must also meet federal continuing education requirements at 40 C.F.R. §§ 171.107(b)(2)(i) – (iii) when approving, verifying the content of, and confirming an applicator's attendance at continuing education courses (each a "CEC"). EPA updated these requirements in 2017, and the Department is updating Parts 4.02, 4.04, 4.05, 4.07, 4.09, and 4.10 accordingly. The Department is also providing clarification on the timing and process for a course sponsor to seek approval for CECs. Specifically:

    a. Revisions to Parts 4.02(b) and 4.07(b) clarify that requests for approval must be submitted on a form provided by the Commissioner;

    b. Revisions to Parts 4.02(c) and 4.07(c) increase the number of days required to submit CECs to the Department for approval, allowing the Department sufficient time to review and respond to the increasing number and complexity of CEC approval requests that it receives;

    c. Revisions to Part 4.02(d) and 4.07(d) provide clarity on what information must be provided to the Department to ensure that the content and quality of each proposed session complies with the Rules;

    d. A new Part 4.02(e) and Part 4.07(e) confirm the session length(s) required to comply with the Rules;

    e. A new Part 4.02(f) and Part 4.07(f) require that, subject to space availability, all courses must be open to all Colorado licensees. These revisions codify long-standing Department policy intended to ensure equitable CEC opportunities for all Colorado licensees. These revisions promote access to and availability of CEC courses to persons who must attend such courses in order to maintain and/or renew their respective licensure or registration status.;

    f. Revisions to Part 4.04 and Part 4.09 describe the method by which a course sponsor must provide attendance confirmation to each attendee and the manner in which course sponsors verify course attendance for each attendee with the Commissioner; and

    g. Revisions to Part 4.05 and 4.10 clarify when the Department may deny a CEC request.

10. As described above, EPA updated its standards in 2017 for training of applicators and for documenting that training, requiring that commercial applicators maintain, provide upon request, and verify training documentation for noncertified applicators and their qualifications. As such, consistent with 40 C.F.R. §§ 171.201(d) and 171.303(b)(7)(vi), the Department is adding the following Parts to the Rules:

    a. Part 5.02(h) to require that training be documented on a form provided by the Commissioner;

b. Part 5.02(k), which requires that all noncertified applicator training meets all provisions set forth in 40 C.F.R. § 171.201(d), which specifies subject matter that must be covered;

c. Part 5.02(l), which requires that an employer must obtain training records for a new hire experienced technician to ensure that the new hire experienced technician has met all of the training requirements established in the Rules; and

d. Part 5.02(m), which defines the records that make up a technician's training record, sets training record retention periods, and establishes a requirement that records be made available to the technician or the Commissioner upon request.

11. EPA also establishes recordkeeping requirements for commercial, registered limited commercial, and registered public applicators. In 2017, EPA updated the relevant standards at 40 C.F.R. § 171.303(b)(7)(vi)(I). Therefore, the Department is updating Part 6.03(j) accordingly, now requiring that commercial applicators record the name and certification number of those making or supervising pesticide applications.

12. Recently, the Department learned that commercial applicators and private applicators interpreted the term "company business name" in multiple ways when complying with Part 7.01 (Equipment Identification), sometimes including names or visual representations on equipment that differed from the name provided to the Department originally. Because the term "company business name" is not defined in Part 7.01, ambiguity exists with respect to whether the vehicle identification must be the company's legal name, a trade name, a company logo, etc. Therefore, the Department is adding Part 7.01(a) to define the term "company business name" to include any name or trade name or trademark registered with the Colorado Secretary of State, any doing business as name as submitted in the licensee's application, and any company logo that clearly communicates the licensee's business name.

13. The Department's Rules include requirements for notifying persons of pesticide applications in Part 12 and for posting specific signage with information on the pesticide application in Part 13. Because notification requirements are also referenced in Articles 8 and 9, and to ensure that the other notification and signage requirements in Rule are not overlooked, the Department is adding Parts 8.03(f) and 9.04(e) to cross-reference notification and signage requirements in Parts 12 and 13.

14. In 2010, the Department revised Part 8.01(i) concerning Category 109 to specify permitted sites of application within the Industrial and Right-of-Way Weed Control category. These sites included sidewalks, trails, paths, parking lots, and certain paved areas. This created confusion in the regulated community concerning whether Category 109 also covered areas that were abutted by or surrounded by turf because turf is covered under Category 206. Therefore, the Department is revising Part 9.01(a), Turf Pest Control, to provide additional clarity on what sites of application are allowed under Category 206 as compared with Category 109. Specifically, the Department is expanding Category 206 to allow application on certain managed turf, ornamental beds, xeriscaped areas, and sidewalks, driveways, etc. not located in a zoned right-of-way (which would fall under Category 109).

15. Part 13, Notification of Pesticide Applications, outlines specific flagging requirements for turf and ornamental applications. To provide additional clarification, the Department is proposing an amendment to Part 13.01 to add a reference to notification flags specified in statute.

16. Part 13, Notification of Pesticide Applications, outlines specific flagging requirements for turf and ornamental applications. Part 13.02 generally describes the required height of signs, but separate requirements exist for golf course clubhouses. To address this confusion, the Department is amending Part 13.02 to clarify that the height requirements do not apply when posting in golf course clubhouses and amending Part 13.04 to clarify signs posted at golf course clubhouses

must be placed in a manner that is conspicuous and easily legible to those entering treated areas.

17. In 2017, EPA revised its requirements at 40 C.F.R. §§ 171.201(2)(iii)(A)(B) and (C) related to the supervision of restricted use pesticide applications made by private applicators who are 16 years of age. Accordingly, the Department has created Part 15.02(c) to identify under what circumstances a 16-year-old unlicensed technician may apply a restricted-use pesticide. The Department uses the term "unlicensed technician" to refer to "non-certified technicians" or "non-certified applicators," these latter two terms reflecting the terminology used by EPA in the Code of Federal Regulations. The Department uses these three terms interchangeably in these Rules.

18. On March 30, 2016, the Department adopted Rules to outline the criteria for which pesticides were allowed for use in Cannabis cultivation. Part 17.03 requires that only registered pesticides be allowed for use in the cultivation of cannabis. However, Part 17.03 does not account for existing stocks policies at the state and federal level that allow for the limited use of existing stocks after a product becomes unregistered (absent a finding that the product poses a significant threat to public health and safety or the environment, in which case existing stocks cannot be used). Therefore, the Department is amending Part 17.03 to allow for the use during the subsequent registration year of an unregistered pesticide product that appeared on the Department's list of pesticides allowed for use on Cannabis at the time of purchase, but was not re-registered with the Department for the subsequent registration year. This change will allow end users to use any remaining unregistered pesticide product, but only during the registration year following the manufacturer's failure to renew the registration. This limited ability to use remaining stocks of an unregistered product does not extend to products that the Department has determined pose a significant threat to public health and safety or the environment.

19. The Department is also amending Part 17.04 to clarify that certain uses of pesticide products on cannabis are considered unlawful acts. Specifically, the Department is clarifying that it is unlawful for a person to use a registered pesticide in the production of cannabis when that product does not meet the criteria set forth in Rule – namely, the pesticide must met all requirements of Part 17.04(a)(1) – (4), Part 17.04(b)(1) – (3), Part 17.04(d), or Part 17.04(e).

18.22. Adopted November 8, 2023 – Effective December 30, 2023

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("Department") pursuant to the Commissioner's authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-112(1)(e) and (f), C.R.S., and §§ 35-10-118(2)(a) – (d), (3)(a) – (c), (4), (5) and (9), C.R.S.

Purpose

The purpose of these Rules is to incorporate new federal certification and training requirements pursuant to 40 C.F.R. Part 171, to update the Rules consistent with requirements in Senate Bill 23-192 ("SB23-192"), and to clarify existing Rule requirements. Specifically, the revisions to the Rules:

1. Amend Part 1.02(a) to use the same definition of "alley" as is found in § 42-1-102(3), C.R.S., and to align the meaning of "vehicle" with § 42-1-102(112), C.R.S.

2. Amend Part 1.02(o) to cross-reference the definition of "use" found in Title 35, Article 10, of the Colorado Revised Statutes.

3. Amend Part 1.03 to update materials incorporated by reference.

4. Amend Part 2.54 to match private applicator supervision and training requirements established in federal law.

5. Create a new Part 2.61(a) to establish and require licensure for private applicators in a new Aerial Pest Control licensure category as required by federal law.

6. Create a new Part 2.61(b) to establish and require licensure for private applicators in a new Soil / Non-Soil Fumigation Pest Control licensure category as required by federal law.

7. Amend Parts 4.11, 4.32, and 4.38 to add new continuing education subject matter requirements established in federal law.

8. Amend Part 5.02(c) and (k) to match and correctly refer to technician training and supervision requirements established in federal law.

9. Amend Part 8.01(d) to match language used in federal law.

10. Amend Part 8.01(j) and create a new Part 8.01(j)(1) to match the federal Public Health Pest Control category and to create a new "Government-Sponsored Public Health Pest Control" category.

11. Create a new Part 8.01(l) to establish and require licensure for commercial agricultural applicators in a new Aerial Pest Control licensure category as required by federal law.

12. Create a new 8.01(m) to establish and require licensure for commercial agricultural applicators in a new Soil / Non-Soil Fumigation Pest Control licensure category as required by federal law.

13. Amend Part 9.04(b) to clarify when and what notice of application must be provided for commercial properties or other sites managed or owned by an off-site organization or entity where an owner or agent of the site is not present at the time of application.

14. Amend Part 10.01(c) to align the Structural Fumigation licensure category with new federal requirements.

15. Amend Part 10.01(h) to remove language that is no longer applicable to the Post-Harvest Potato Pest Control licensure category.

16. Create a new 10.01(i) to establish and require licensure for commercial structural applicators in a new Soil / Non-Soil Fumigation Pest Control licensure category as required by federal law.

17. Amend Part 12.01 to clarify that the pesticide-sensitive registry application and medical justification must be for the person who will be listed on the registry.

18. Amend Part 12.02 to add addresses for principal place of employment, school, or both in accordance with new SB23-192 requirements and creates the definition of school this Part pertains to.

19. Amend Part 12.06 to clarify applicability and content of notice requirements for turf or ornamental pesticide applications for persons whose names appear on the pesticide-sensitive registry.

20. Amend Part 12.07 to clarify notice requirements for turf or ornamental pesticide applications and to include an electronic notification provision in accordance with SB23-192.

21. Create a new Part 12.08 to address other notice requirements in SB23-192 concerning turf or ornamental pesticide applications performed on a property that abuts or is entirely located within

two-hundred and fifty feet of a pesticide-sensitive person's listed principal residential address, provided the residential address appears in a database to be developed by the Department.

22. Amend Part 12.10 to clarify notice requirements for structural pesticide applications and to include an electronic notification provision for such applications.

23. Amend Part 15.02 to clarify supervision requirements established in federal law.

24. Correct non-substantive typographical, formatting, grammatical, and citation errors throughout the Rules.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. The Department learned from stakeholders that the definition of "alley" in Part 1.02(a) is confusing in relation to abutting properties. The Department is updating the definition of "alley" to repeat the definition used in § 42-1-102(3), C.R.S., to clarify that an "alley" is not intended for through vehicular traffic by "vehicles" as that term is defined at § 42-1-102(112), C.R.S., and so would not include a bike path or trail.

2. In the 2023 legislative session, SB23-192 updated the definition of "use" (as in to "use" a pesticide) to meet the new federal definition of "use" established in 40 C.F.R. Part 171 in 2017. Part 1.02(o) now cross-references the new definition of "use" at § 35-10-103(18), C.R.S.

3. As a result of new federal certification and training requirements in 40 C.F.R. §§ 171.201(b) – (d), Part 2.54 is being amended to address new supervision requirements for private applicators that require "on-site" supervision for any use of a restricted use pesticide by an unlicensed individual, including specific training, qualifications, and use-specific conditions that must be met prior to the use of any restricted use pesticide by that unlicensed individual.

4. As a result of new federal certification requirements established in 40 C.F.R. Part 171 (2017), applicators must now hold, in addition to their primary licensure category, a new federal Aerial Pest Control category for any application(s) made aerially. A new Part 2.61(a) for private applicators and a new Part 8.01(l) for agricultural applicators has been created to establish the licensure category and the licensure requirement for aerial applications. The revisions provide for obtaining the new category by examination offered by the Department or other state lead agencies within the last 12 months, through reciprocal licensure, or through renewal of the category by obtaining continuing education credit.

5. As a result of new federal certification requirements established in 40 C.F.R. Part 171 (2017), applicators must now hold, in addition to their primary licensure category, a new federal Soil/Non-Soil Fumigation category for any application of a fumigant not made to a structure. A new Part 2.61(b) for private applicators, a new Part 8.01(m) for agricultural applicators, and a new 10.01(i) for structural applicators has been created to establish the licensure category and the licensure requirement for soil / non-soil fumigant applications. The revisions provide for obtaining the new category by examination offered by the Department within the last 12 months, through reciprocal licensure, or through renewal of the category by obtaining continuing education credit. Because soil and non-soil fumigation requirements change from state-to-state, the Department will not allow a person to obtain this licensure category by examination offered in another state.

6. The revised federal certification requirements also established additional core educational subject matter elements necessary for an applicator to obtain continuing education credit. Parts 4.11, 4.32, 4.38 have been amended to add these new elements.

7. The revised federal certification requirements now require that commercial applicator technicians must be fully trained prior to the use of an restricted use pesticide and that all supervision, training, qualification, and use-specific conditions at 40 C.F.R. §§ 171.201 must be met. Parts 5.02(c) and (k) have been amended to accurately reference these requirements.

8. Federal certification licensure categories were updated in 40 C.F.R. Part 171 (2017), and the language of Part 8.01(d) has been revised to match the federal Seed Treatment licensure category.

9. Federal certification licensure categories were updated in 40 C.F.R. Part 171 (2017). EPA updated the federal public health pest control category, requiring that the category address the use of restricted use pesticides in government-sponsored public health programs. Because this category no longer addresses general use pesticide applications for public health applications made for non-governmental persons or entities (which covers the majority of public health pest control applications in Colorado), the Department created a separate category for non-government commercial applicators who use pesticides for the management and control of pests having public health importance. The proposed amendment to Part 8.01(j) clarifies Colorado's existing public health category for the use of general use pesticides for non-governmental public health pest control applications and adds a new 8.01(j)(1), "Government Sponsored Public Health Pest Control", to meet the federal certification category.

10. The Department learned that Part 9.04(b) required clarification because the term "commercial" was not broad enough to cover the universe of applications contemplated in Part 9.04(b). The existing language had been specific to applications made to commercial properties, but it did not clearly address other sites that may not be considered "commercial" or zoned "commercial." Part 9.04(b) has been amended to address those sites, including greenbelts or open space areas managed by off-site organizations or entities where an owner of the site or an agent of an owner of the site is not present at the site.

11. As a result of new federal certification requirements established in 40 C.F.R. Part 171 (2017) concerning soil/non-soil fumigation pesticide applications, Colorado needed to differentiate its existing fumigation category from the new federal category. Therefore, the Department has amended Part 10.01(c) to specifically reference "Structural Fumigation"; define applicable structural sites of application; and ensure that applicators know that category 303, Structural Fumigation, must be held for the application of a fumigant when made to any structure, regardless of the pest being controlled or other licensure category(ies) held by the applicator.

12. Because Part 10.01(h) included language concerning the Post-Harvest Potato Pest Control licensure category that is now obsolete, the Department has removed that language.

13. Part 12.01 establishes the requirement for a pesticide-sensitive person to submit an application to be placed on the pesticide-sensitive registry. Part 12.01 is being amended to clarify that the application and medical justification submitted must be for the person intended to be listed on the registry.

14. As a result of SB23-192, pesticide-sensitive persons may list their principal place of employment, principal school address, or both as an address or addresses requiring notification of turf or ornamental applications made at those sites. Part 12.02 has been amended to account for this statutory change and adds the definition of schools this Part pertains to.

15. Part 12.06 specifies what notification information must be provided to a pesticide-sensitive person whose name is on the pesticide-sensitive registry and clarifies that such notice must be provided when a commercial applicator makes a turf or ornamental application to a property that abuts the pesticide-sensitive person's principal residential address and, if provided to the Department, to that person's principal place of employment, school, or both.

16. SB23-192 provided for the electronic notification of pesticide applications to pesticide-sensitive persons. To clarify underlying notice requirements, the Department has amended Parts 12.07(a) (concerning turf or ornamental applications) and 12.10(a) (concerning structural applications). To further clarify the circumstances and manner in which electronic notice is given to pesticide-sensitive persons whose names appear on the pesticide-sensitive registry, the Department has added Parts 12.07(b) and 12.10(b), which describe that only one attempt at electronic notification is required; a record of the attempt must be maintained in the applicator's records in order to avoid triggering non-electronic notification requirements; and any changes to the date, time, or location of application require an additional electronic notification to be made no less than 24 hours prior to the application.

17. SB23-192 required that, on or before July 1, 2024, the Department develop a searchable database of all properties that abut or are entirely located within two hundred and fifty feet of any residential address listed on the pesticide-sensitive registry. SB23-192 also required that, once that database was created, the Department adopt rules requiring that applicators provide notice of applications made to a property that is listed in the database as abutting, or being entirely located within two hundred and fifty feet of, the pesticide sensitive-person's listed residential address, which address must be the person's principal residential address in accordance with § 35-10-112(1)(c)(I)(A), C.R.S. A new Part 12.08 has been created to address these new requirements, effective July 1, 2024.I

18. As a result of new federal certification and training requirements in 40 C.F.R. Part 171 (2017), Part 15.02 is being amended to clarify new supervision requirements for private applicators and commercial applicators that now require "on-site" supervision for any use of a restricted use pesticide.

Notice of Proposed Rulemaking

Tracking number

2023-00618

Department

1400 - Department of Early Childhood

Agency

1402 - Child Care Program Licensing

CCR number

8 CCR 1402-1

Rule title

CHILD CARE FACILITY LICENSING RULES AND REGULATIONS

Rulemaking Hearing

Date

10/27/2023

Time

10:00 AM

Location

Webinar Only: https://us02web.zoom.us/meeting/register/tZUpf-yprz0tGtEr5OhRvoKmvfLqXaRAlmNY

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Executive Director to consider adopting rules regarding Child Care Facility Licensing, to implement Colorado House Bill 22-1295. More specifically, the Executive Director will be considering rules regulating (General Licensing), Child Care Centers, Children's Resident Camps, School-Aged Child Care Programs, Special Activities, and Substitute Placement Agencies. These rules currently exist within the Colorado Department of Human Services, and are being transferred/re-adopted by the Colorado Department of Early Childhood. The proposed rule revisions include: new rule numbering; updates to departmental, statutory, and cross-rule references; and provide a general cleanup of the rule language to correct grammatical errors and add clarity.

Statutory authority

Sections 26.5-1-101, 26.5-1-105(1), 26.5-5-306(2), 26.5-5-311(1)(a), 26.5-5-313(4), 26.5-5-314(1) and (6), 26.5-5-316(1)(a)(I)(E), 26.5-5-316(1)(b)(II), 26.5-5-328(3)(b), and 24-4-103, C.R.S.

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COLORADO DEPARTMENT OF EARLY CHILDHOOD~~HUMAN SERVICES~~

~~Social Services Rules~~Division of Early Learning, Licensing, and Administration

CHILD CARE FACILITY LICENSING RULES AND REGULATIONS

8~~12~~ CCR ~~2509-8~~1402-1

2.100 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 *et seq*. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 *et seq*. (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, sections 26.5-5-301, *et seq*., C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.

2.101 SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures to become a licensed child care facility, and the health and safety requirements of licensed child care facilities in Colorado. These rules will address the License Types, Application Process, Fees, Civil Penalties, Appeals And Waivers, Background Checks, Reporting requirements, Posting requirements, Confidentiality, Civil Rights, Fire, Health Inspection and Zoning Codes, and Emergency and Disaster Preparedness.

2.102 APPLICABILITY

The provisions of these rules and regulations shall be applicable to Family Child Care Homes 2.300, Child Care Facilities 2.200, School Age Child Care 2.500, Substitute Placement Agencies 2.800, Neighborhood Youth Organizations 2.700, and Children's Resident Camps 2.400, licensed and regulated by the Colorado Department of Early Childhood.

~~7.700 CHILD CARE FACILITY LICENSING~~

2.103~~7.701~~ GENERAL RULES FOR CHILD CARE FACILITIES

~~7.701.1 INTRODUCTION~~

~~All rules in Section 7.701, *et seq.*, shall be known and hereinafter referred to as the General Rules for Child Care Facilities and will apply to all child care applicants and licensees subject to the Child Care Licensing Act, Sections 26-6-101 to 26-6-119, C.R.S.~~

~~7.701.2~~2.104 DEFINITIONS

A. "Affiliate of a licensee," means any person or entity that owns more than five (5) percent of the ownership interest in the business operated by the licensee or the applicant for a license; or any person who is directly responsible for the care and welfare of children served; or any executive, officer, member of the governing board, or employee of a licensee; or a relative of a license, which relative provides care to children at the licensee's facility or is otherwise involved in the management or operations of the licensee's facility.

B. "Annually" means the time frame from the initial date of hire, training, licensing, or certification, and the following twelve months

C. "Calendar year" means the time frame from January 1 to December 31.

D. "Child abuse," and "child neglect" mean the same as in the definition of "child abuse or neglect" set forth in ~~s~~Section 19-1-103(1), C.R.S., unless otherwise indicated.

E. "Child Care Centers," are defined at section 26.5-5-303(3)~~26-6-102(5)~~, C.R.S.

~~Types of child care centers are further detailed at section 7.702, "Rules Regulating Child Care Centers".~~

~~A "school-age child care center" (referred to as the "center" in this subsection c1) means a child care center that provides care for five (5) or more children who are between five (5) years of age and up to the age of eighteen (18) years of age. Children 4 years of age, who will turn 5 on or before October 15th of the current calendar year may attend the center as part of a "building-based school-age child care program" or "building-based day camp" summer program prior to their kindergarten year. The center's purpose is to provide child care and/or an outdoor recreational experience using a natural environment. The center operates for more than one week during the year. The term includes facilities commonly known as "day camps", "summer camps", "summer playground programs", "before and after school programs", and "extended day programs." this includes centers operating with or without compensation for such care, and with or without stated educational purposes.~~

~~A "building-based school-age child care program" means a child care program that provides care for five (5) or more children who are between five (5) years of age and up to the age of eighteen (18) years of age. Four (4) year old children may attend a building based school age child care center the summer prior to attending kindergarten and the child's fifth (5th) birthday occurs on or before October 15th. The center is located in a building that is regularly used for the care of children.~~

~~A "mobile school-age child care program" provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade and up to the age of eighteen (18) years. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis for the care of children.~~

~~An "outdoor-based school-age child care program" provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade and up to the age of 18 years. This program uses no permanent building on a regular basis for the care of children. Children are cared for in a permanent outdoor or park setting.~~

~~"Child Placement Agency," is defined at section 26-6-102(7), C.R.S.~~

~~Child placement agencies are further detailed at section 7.710, "Rules and Regulations for Child Placement Agencies".~~

~~To arrange for placement is to act as an intermediary by assisting a parent or guardian or legal custodian to place or plan to place a child with persons unrelated to the child for 24-hour care.~~

~~Any agency from out-of-state placing a child within Colorado must be licensed as a child placement agency by the State Department unless the placement services are coordinated with and provided by a county department of social services, human services or a child placement agency licensed by the State Department.~~

~~"Children's Habilitation Residential Program (CHRP) Waiver provides services for children and youth, ages birth (0) through twenty (20) years of age, who have an intellectual or developmental disability and very high needs. Their needs for support put them at risk of, or in need of, out-of-home placement. Waiver services help children and youth learn and maintain the skills needed to live in their communities."~~

F. "Children's Residential Camp," is defined in section 26.5-5-303(5)~~26-6-102(8)~~, C.R.S.~~Types of children's resident camps are further detailed at section 7.711, "Rules Regulating Children's Resident Camps".~~

~~"Citizen/legal resident" means a citizen of the United States, current legal resident of the United States, or a person lawfully present in the United States.~~

G. "Consumer Product Safety Commission", as referred to in rules Regulating Child Care Facilities, means the National Commission that establishes standards for the safety of children's equipment and furnishings and for playground safety.

H. "Convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

I. "Critical incident" is a serious incident or concern or potential incident or concern that poses a danger to a child or children at the facility or of a staff member at the facility.

~~"Cultural Responsiveness" means that an organization designs and implements services and practices that consider the unique culture of the individuals, families, and communities served.~~

~~"Day Treatment Center," is defined at section 26-6-102(10), C.R.S.~~

~~Day treatment centers are further detailed at section 7.706, 12 CCR 2509-8, "Rules Regulating Day Treatment Centers".~~

J. "Employee" or "applicant for employment," for the purpose of the child abuse or neglect records check required in rule section 2.117~~7.701.32~~, is defined as: an individual (other than an individual who is related to all children for whom child care services are provided):

1. Who is employed by a licensed or qualified exempt child care provider for compensation, including contract employees or self-employed individuals;

2. Whose activities involve the care or supervision of children for a licensed or qualified exempt child care provider or unsupervised access to children who are cared for or supervised by a licensed or qualified exempt child care provider; or

3. Any individual residing in a licensed or qualified exempt family child care home who is age 18 and older.

K. "Facility" is any business or operation established for the purpose of providing child care services that are required to be licensed pursuant to the Child Care Licensing Act, s~~S~~ection 26.5-5-301 ~~26-6-101~~ *et seq.*, C.R.S.

L. "Family Child Care Home," is defined at section 26.5-5-303(7)~~26-6-102(13)~~, C.R.S.~~ Types of family child care homes are further detailed at section 7.707, "Rules Regulating Family Child Care Homes".~~

M. "Final Agency Action" means the determination made by the State Department, after opportunity for hearing to deny, suspend, revoke, or demote to probationary status a license issued pursuant to the Child Care Licensing Act or an agreement between the State Department and the licensee concerning the demotion of such a license to a probationary license.

~~"Foster Care Home," is defined at section 26-6-106(14) C.R.S~~

~~Types of foster care homes are further detailed at section 7.708, "Rules Regulating Family Foster Care Homes".~~

N. "Governing Body" is the individual, partnership, corporation, or association in whom ultimate authority and legal responsibility are vested for the administration and operation of the child care facility.

O. "Health Department" is the Colorado Department of Public Health and Environment (CDPHE) or the local county department of health.

P. "Licensee" is the entity or individual to whom the license is issued and has the legal capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. The licensee may be a governing body.

Q. "Licensing Specialist" is the authorized representative of the State Department who inspects and audits child care facilities to ensure compliance with licensing requirements and to investigate possible violations of those requirements.

R. "Negative licensing action" is defined in~~at~~ section 26.5-5-303(16)~~26-6-102(25)~~, C.R.S.**,** also known as adverse action, means a final agency action resulting in the denial of an application, the imposition of fines, or the suspension or revocation of a license issued pursuant to the Child Care Licensing Act or the demotion of such a license to a probationary license.

S. "Neighborhood Youth Organization," is defined in~~at~~ section 26.5-5-303(17)~~26-6-102(26)(a)~~, C.R.S. ~~Neighborhood youth organizations are further detailed at section 7.720, "Rules Regulating Neighborhood Youth Organizations".~~

T. "Relative" is defined at section 26.5-5-303(24)~~26-6-102(32)~~, C.R.S.

~~"Residential Child Care Facility" (RCCF) is defined at section 26-6-102(33), C.R.S.~~

~~Residential child care facilities are further detailed at section 7.705, "Rules Regulating Residential Child Care Facilities".~~

~~A "Transition Program" may be a component of an RCCF program in which the child is residing in the RCCF part of the time and in a living situation that the child is expected to move to after treatment in the RCCF is completed. The purpose of transition is to enable the child to transition to the home or a less restrictive setting in a manner that prepares the child for success in the new setting.~~

~~"Secure Residential Treatment Center," is defined at section 26-6-102(35), C.R.S.~~

~~Secure residential treatment centers are further detailed at section 7.713, "Minimum Rules and Regulations for Secure Residential Treatment Centers".~~

~~"Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder that is of sufficient duration and has resulted in a functional impairment that substantially interferes with or limits a child's role or functioning in family, school, or community activities. Serious emotional disturbances do not~~

~~include developmental disorders, substance-related disorders, or conditions or problems that may be a focus or clinical attention unless they occur with another diagnosable serious emotional disturbance.~~

~~"Specialized Group Facility," is defined at section 26-6-903(33), C.R.S. and includes "Specialized Group Homes" and "Specialized Group Centers".~~

~~Specialized group facilities are further detailed at section 7.709, "Rules Regulating Specialized Group Facilities".~~

~~SPECIALIZED GROUP FACILITY MAXIMUM CAPACITY~~

~~CHRP~~	~~NON-CHRP~~	~~TOTAL CHILDREN~~
~~0~~	~~11~~	~~11~~
~~1~~	~~7~~	~~8~~
~~2~~	~~6~~	~~8~~
~~3~~	~~5~~	~~8~~
~~4~~	~~4~~	~~8~~
~~5~~	~~3~~	~~8~~
~~6~~	~~2~~	~~8~~

~~Specialized Group Homes Or Group Centers who are serving children enrolled in the Children's Habilitation Residential Program (CHRP) waiver must be in compliance with rules contained within the Department Of Health Care Policy And Financing's Medical Assistance Manual at 10 CCR 2505-10 section 8.508 (2019), which is hereby incorporated by reference. No later additions or amendments incorporated. These regulations are available at~~ https://www.sos.state.co.us/CCR~~.~~

~~Specialized Group facilities that provide services for one or more children enrolled in the CHRP waiver must be staffed with a sufficient number of qualified staff members to ensure the needs of all children/youth residing in the facility are met. Ongoing assessments of the needs of all children/youth shall be conducted by the sponsoring agency during visits to the specialized group facility.~~

~~A Specialized Group Home is located in a house owned or otherwise controlled by the group home parents who are primarily responsible for the care of the children and reside at the home.~~

~~A Specialized Group Center is located in a facility owned or controlled by a governing body that hires the group center parents or personnel who are primarily responsible for the care of the children.~~

U. "State Department" is the Colorado Department of ~~Human Services~~Early Childhood.

V. "Trails" means the State Department's confidential information system which maintains abuse and neglect referrals, investigations, and the investigation outcomes.

APPLICATION PROCESS, LICENSE TYPES, AND LICENSING PROVISIONS~~"Trauma-Informed" means that the services or programs to be provided to or on behalf of the child/youth are provided under an organizational framework that involves understanding, recognizing, and responding to the effects of all types of trauma and in accordance with recognized principles of a trauma- informed approach and trauma-specific interventions to address trauma's consequences and facilitate healing.~~

~~7.701.3 APPLICATION PROCESS~~

~~7.701.31~~2.105 ORIGINAL APPLICATION

A. A completed original application accompanied by the appropriate fee ~~and proof of lawful presence in the United States (see section 3.140.11)~~ must be submitted to the State Department a minimum of sixty (60) days prior to the proposed opening date for the facility. ~~For 24-hour agencies or facilities, the addendum with specific requirements must be completed and submitted with the application.~~

B. A licensing evaluation will occur only after the State Department has received the complete application and appropriate fee.

~~C. If a county or agency establishes and plans to sponsor a Specialized Group Facility, the governing body for the Specialized Group Facility is the licensee. A written plan for the supervision of the Specialized Group Facility must accompany the application.~~

2.106~~7.701.35~~ CHANGES REQUIRING A NEW APPLICATION

A. A license is deemed surrendered and a new application is required in any of the following circumstances:

1~~A~~. Change of licensee, owner, or governing body;

2~~B~~. Change in classification of facility or service offered; or

3~~C~~. Change in location of the facility.

~~7.701.36 Types of Licenses~~

~~7.701.361~~2.107 PERMANENT LICENSE

A. A permanent license is granted when the State Department is satisfied that the facility or agency is in compliance with the appropriate Department rules and the Child Care Licensing Act. The permanent license remains in effect until surrendered or revoked.

B. Once a permanent license has been issued, the licensee must annually submit to the State Department a declaration of compliance with the applicable licensing rules and notice of continuing operation on the form prescribed by the State Department, along with the appropriate annual fee as set forth ~~at~~in rule section 2.110~~7.701.4~~.

C. Failure to submit the annual Continuation Notice and fee will constitute a consistent failure to maintain State Department standards and may result in fines or the revocation of the license.

~~7.701.362 TIME-LIMITED LICENSE~~

~~A. A time-limited license is granted for specific types of child care facilities or agencies when the State Department is satisfied that the facility or agency is in compliance with the appropriate State Department rules and the Child Care Licensing Act. The time-limited license will expire on a set date.~~

~~B. Once a time-limited license has been issued, the licensee must submit a renewal application and appropriate fee prior to the expiration of the time-limited license. This will keep the license in effect until a new time-limited license can be issued.~~

~~C. Failure to submit the renewal application prior to the expiration of the time-limited license will result in the expiration of the license and closure of the facility.~~

~~7.701.363~~2.108 PROVISIONAL LICENSE

A. A provisional license or certificate may be issued only for the initial six (6) month licensing period.

B. This license permits the facility to operate while it is temporarily unable to conform to all rules upon proof by the applicant that attempts are being made to comply with the rules.

C. If an applicant holds a valid provisional license at the time of application for a permanent license, the provisional license will remain in effect until the application is acted on by the State Department.

~~7.701.364~~2.109 PROBATIONARY LICENSE

A. The Department may make a probationary the license of any facility as provided in section 26.5-5-317(2)~~26-6-108(2)~~, C.R.S. making a license probationary is a negative licensing action as defined in section 26.5-5-303(16)(a)~~26-6-102(25)(A)~~, C.R.S.

B. If the applicant holds a valid probationary license and submits the renewal application and appropriate fee for a permanent license, the current license will remain in effect until the renewal application is acted on by the State Department.

~~7.701.365~~2.110 MULTIPLE LICENSES

A. If a licensee wishes to assume child care responsibility in more than one classification of care, separate applications, fees, and licensing evaluations are required for each classification. A family child care home ~~and a specialized group home~~ may only be licensed as one type of classification at any one location address.

B. If a licensee wishes to operate more than one facility of the same classification but at different locations, a separate application, fee, and evaluation are required for each location.

C. Operating multiple licenses of the same classification at a single location by the same licensee or governing body is prohibited.

~~7.701.4~~2.111 FEES

A. The appropriate application fee ~~outlined in 7.701.4.C~~, must be submitted to the State Department with the application for a child care, agency or neighborhood youth organization license at least sixty (60) calendar days prior to the anticipated opening date of the facility or the expiration date of the provisional or probationary license.

B. The appropriate annual continuation fee ~~outlined in 7.701. 4.C~~, must be submitted to the State Department annually, at least sixty (60) calendar days prior to the anniversary date of the license, along with a completed continuation declaration.

C. Following is a schedule of original and annual continuation fees for all types of child care facilities and agencies:

FAMILY CHILD CARE HOMES (1-6 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$65.00
Continuation	$65.00
(*One year from licensed anniversary date)	

LARGE FAMILY CHILD CARE HOMES (7-12 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$100.00
Continuation	$100.00
(*One year from licensed anniversary date)	

EXPERIENCED FAMILY CHILD CARE PROVIDER (UP TO 9 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$100.00
Continuation	$100.00
(*One year from licensed anniversary date)	

SMALL CHILD CARE CENTERS, PRESCHOOLS, SCHOOL-AGE CHILD CARE, CHILDREN'S RESIDENT CAMPS AND NEIGHBORHOOD YOUTH ORGANIZATIONS (5-15 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$200.00
Continuation	$200.00
(*One year from licensed anniversary date)	

LARGE CHILD CARE CENTERS, PRESCHOOLS, SCHOOL-AGE CHILD CARE, CHILDREN'S RESIDENT CAMPS AND NEIGHBORHOOD YOUTH ORGANIZATIONS (16-30 CHILDREN)	
Facilities in this category will pay a base fee + a per child in capacity fee not to exceed $1,800	
	JULY 1, 2020, and beyond*
Original Application	Base $175.00+ $3.00 Per Child
Continuation	Base $175.00+ $3.00 Per Child
(*One year from licensed anniversary date)	

LARGE CHILD CARE CENTERS, PRESCHOOLS, SCHOOL-AGE CHILD CARE, CHILDREN'S RESIDENT CAMPS AND NEIGHBORHOOD YOUTH ORGANIZATIONS (31 OR MORE CHILDREN)	
Facilities in this category will pay a base fee + a per child in capacity fee not to exceed $1,800	
	JULY 1, 2020, and beyond*
Original Application	Base $300.00 + $3.00 Per Child
Continuation	Base $300.00 + $3.00 Per Child
(*One year from licensed anniversary date)	

Day Treatment CENTERS			
	Beginning 2018*	Beginning 2019*	2020 and beyond*
Original Application	$500.00	$665.00	$884.00
Continuation 0-12 Students	$340.00	$438.00	$535.00
Continuation 13-25	$556.00	$716.00	$875.00
Continuation 26-50 Students	$770.00	$992.00	$1,216.00
Continuation 51 or more Students	$1,003.00	$1,291.00	$1,580.00
(*One year from licensed anniversary date)			

Specialized Group Facilities			
	Beginning 2018*	Beginning 2019*	2020 and beyond*
Original Application	$200.00	$266.00	$354.00
Continuation	$169.00	$217.00	$267.00
(*One year from licensed anniversary date)			

Child Placement Agency- Foster Care			
	Beginning 2018*	Beginning 2019*	2020 and beyond*
Original Application	$880.00	$1,133.00	$1,386.00
Continuation 0-5 Homes	$448.00	$577.00	$705.00
Continuation 6-15 Homes	$571.00	$732.00	$899.00
Continuation 16-30 Homes	$710.00	$914.00	$1,108.00
Continuation 31-50 Homes	$834.00	$1,074.00	$1,313.00
Continuation 51 or More Homes	$973.00	$1,253.00	$1,532.00
(*One year from licensed anniversary date)			

Child Placement Agency- Adoption			
	Beginning 2018*	Beginning 2019*	2020 and beyond*
Original Application	$672.00	$865.00	$1,059.00
Continuation 0-5 Finalized Adoptions	$340.00	$423.00	$513.00
Continuation 6-11 Finalized Adoptions	$379.00	$488.00	$597.00
Continuation 12-17 Finalized Adoptions	$401.00	$516.00	$632.00
Continuation 18-23 Finalized Adoptions	$448.00	$577.00	$705.00
Continuation 24 or More Finalized Adoptions	$463.00	$596.00	$730.00
(*One year from licensed anniversary date)			

A child placement agency licensed for both foster care and adoptions will pay only one fee, either the foster care fee or the adoption fee, whichever is greater. The annual report required by regulation 7.710.72, b, must be attached.

Homeless Youth Shelter			
-	Beginning 2018	Beginning 2019	2020 and beyond
Original Application	$500.00	$665.00	$884.00
Continuation	$463.00	$596.00	$729.00

Residential Childcare Facility			
-	Beginning 2018* ** ***	Beginning 2019* ** ***	2020 and beyond* ** ***
Original Application	$1,111.00	$1,430.00	$1,750.00
Continuation 0-12 Children/Youth	$340.00	$438.00	$535.00
Continuation 13-25 Children/Youth	$556.00	$716.00	$875.00
Continuation 26-50 Children/Youth	$770.00	$992.00	$1,216.00
Continuation 51-100 Children/Youth	$1,003.00	$1,291.00	$1,580.00
Continuation 101 or more Children/Youth	$1,235.00	$1,570.00	$1,800.00
(*One year from licensed anniversary date)	-	-	-
(**With Shelter add $100.00 to all listed license fees)	-	-	-
(***With PRTF add $200.00 to all listed license fees)	-	-	-

Secure Residential Childcare Facility			
-	Beginning 2018	Beginning 2019	2020 and beyond
Original Application	$1,297.00	$1,670.00	$1,800.00
Continuation	$1,297.00	$1,670.00	$1,800.00

Changes Made to All License Types	
	July 1, 2020, and JULY 1, beyond
Changes to Licensed Capacity	$97.00
Changes to Physical Premises	$97.00
Duplicate Licenses	$40.00

E. International adoption agencies with out-of-state offices will be required to reimburse the State for actual and necessary charges involved with travel to out-of-state offices.

DF. The appropriate fee must be submitted for each appeal request submitted within each calendarlicensing year. There will be no charge for waiver requests or emergency appeals.

LESS THAN 24-HOUR APPEAL AND FEES (PER CALENDAR YEAR)

Initial appeal request	Free
Second appeal request	$10.00 Each
Three or more requests	$25.00 Each
Emergency Appeals	Free

E~~G~~. Any eligible child care facility providing less than 24-hour care that holds a Colorado shines level 3-5 and an average annual enrollment of at least fifty (50) percent of total children enrolled receiving assistance from the Colorado Child Care Assistance Program (CCCAP) or enroll on average at least fifty (50) percent of the county's total CCCAP population may receive a discounted continuation fee of up to fifty (50) percent of their respective license type. The Colorado shines rating and CCCAP enrollment must be verified by the State Department.

~~7.701.11~~2.112 LICENSING EXEMPTIONS

A. A license must be obtained before care begins unless such care is exempt as set forth below.

B. A license is not required for:

1. A special school or class in religious instruction. Religious instruction is defined as instruction in religion as a subject of general education, or instruction in the principles of a particular religious faith. Faith-or spiritually-based programs which offer religious instruction combined with early childhood education, child care or child development activities as a part of the daily routine must obtain a child care license.

2. A special school or class operated for a single skill-building purpose. Single skill building includes activities or instruction in one subject area. A single skill program includes the development of an individual skill which does not include naptime periods or overnight care, or any other time children are not engaged in that specific activity. Any time activities other than the identified single skill are provided; the program is no longer considered a single skill program and must obtain the appropriate license. Meals and snacks may be incorporated into the single skill request.

3. A child care center operated in connection with a church, shopping center, or business where children are cared for during short periods of time, not to exceed three hours in any twenty-four (24) hour period of time, while parents or persons in charge of such children, or employees of the church, shopping center, or business whose children are being cared for at such location are attending church services at such location, shopping, patronizing or working on the premises of the business. This facility must be operated on the premises of the church, business, or shopping center. Only children of parents or guardians who are attending a church activity; patronizing the business or shopping center or working at the church, shopping center or business can be cared for in the center.

4. Occasional care of children with or without compensation, which means the offering of child care infrequently and irregularly that has no apparent pattern.

5. A family care home that provides less than 24-hour care. Care must only be provided using one (1) of the options below at any one time:

   a. Care of children who are directly related to the caregiver by blood, marriage or adoption. The relationship between the caregiver and child includes biological child(ren), step-child(ren), grandchild(ren), niece, nephew, sibling, or first cousin and provide care for children who are siblings from the same family household which is unrelated to the provider; or

b. Care of up to four (4) children, related or unrelated to the caregiver. No more than two (2) children under the age of two years may be cared for at any one time.

6. A child care facility that is approved, certified, or licensed by any other state department or agency, or by a federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility.

7. The medical care of children in nursing homes.

8. Ski area guest child care facilities as defined at s~~S~~ections 26.5-5-303(10) and 26.5-5-307~~26-6-102(16) and 26-6-103.5~~, C.R.S.

9. Neighborhood Youth Organizations as defined at s~~S~~ections 26.5-5-308 and 26.5-5-303(17),~~26-6-102(5.8) and 26-6-103.7,~~ C.R.S.

10. Public services short-term child care facility as defined in section 26.5-5-303(22), C.R.S.

DISPUTE RESOLUTION

~~7.701.12~~2.113 CIVIL PENALTIES AND INJUNCTIONS

A. Violation of any provision of the Child Care Licensing Act or intentional false statements or reports made to the State Department or to any agency lawfully delegated by the State Department to make an investigation or inspection may result in fines assessed of not more than $250~~100~~ a day the first day, $500 for the second day, $1,000 a day for the third and subsequent to a maximum of $10,000:

1. A civil penalty will be assessed by the State Department only in conformity with the provisions and procedures specified in Article 4 of Title 24, C.R.S. No civil penalty will be assessed without a hearing conducted pursuant to the Child Care Licensing Act and Article 4 of Title 24, C.R.S., before an Administrative Law Judge acting on behalf of the State Department.

2. Prior to receipt of a cease and desist order from the State Department or from any agency delegated by the State Department to make an investigation or inspection under the provision of the Child Care Licensing Act, any unlicensed child care facility may be fined up to $250~~100~~ a day for the first day, $500 for the second day, $1,000 a day for the third and subsequent days to a maximum of $10,000 for each violation of the Child Care Licensing Act or for any statutory grounds as listed in section 26.5-5-317(2) C.R.S ~~to a maximum of $10,000 for providing care for which a license is required~~.

3. For providing child care for which a license is required after receipt of a cease and desist order, an unlicensed facility shall~~will~~ be fined up to $500; a sentence of up to 10 days in jail; or both.~~$100 a day to a maximum of $10,000.~~

4. Assessment of any civil penalty under this rule section will not preclude the State Department from initiating injunctive proceedings pursuant to s~~S~~ection 26.5-5-320, C.R.S.

5. A licensed child care facility may be fined up to $250~~100~~ a day for the first day, $500 for the second day, $1,000 a day for the third and subsequent days to a maximum of $10,000 for each violation of the Child Care Licensing Act or for any statutory grounds as listed at s~~S~~ection 26.5-5-317(2)~~26-6-108(2)~~, C.R.S.

6. Assessment of any civil penalty does not preclude the State Department from also taking action to deny, suspend, revoke, make probationary, or refuse to renew that license.

7. Any person intentionally making a false statement or report to the Department or to any agency delegated by the State Department to make an investigation or inspection under the provisions of the Child Care Licensing Act may be fined up to $250~~100~~ a day for the first day, $500 for the second day, $1,000 a day for the third and subsequent days to a maximum of $10,000.

8. Civil penalties assessed by the State Department must be made payable to the Colorado Department of ~~Human Services~~Early Childhood.

B. In addition to civil penalties that may be assessed under rule s~~S~~ection 2.114(A)~~7.701.12.A~~, when an individual operates a facility after a license has been denied, suspended, revoked, or not renewed, or before an original license has been issued, injunctive proceedings may be initiated to enjoin the individual from operating a child care facility without a license.

C. Within ten (10) working days after receipt of a notice of final agency action with regard to a negative licensing action or the imposition of a fine, or when the State Department identifies and documents in a report of inspection serious violations of any of the standards that could impact the health, safety or welfare of a child cared for at the facility or family child care home, each child care center, facility or family child care home must provide the State Department with the names and mailing addresses of the parents or legal guardians of each child cared for at the facility so that the State Department can notify the parents or legal guardians of the negative licensing action taken or the serious violation impacting the health, safety or welfare of a child. The facility will be responsible for paying a fine to the State Department that is equal to the direct and indirect costs associated with the mailing of the notice.

~~7.701.13~~2.114 APPEALS AND WAIVERS

The State Department is authorized to hear and decide three kinds of appeal or waiver requests by applicants or licensees: hardship appeals in this rule set, also referred to as hardship waivers, stringency appeals, and materials waiver requests, according to the ~~following~~ procedures set forth in this rule section. ~~For purposes of this sSection 2.1067.701.13, a county department of human/social services that certifies foster homes under § 26-6-106.3, C.R.S., is a "licensee."~~

A. Hardship Waivers

1. Any applicant or licensee who has applied for or been issued a license to operate a child care facility ~~or child placement agency~~ has a right to appeal, pursuant to section 26.5-5-314(5)~~§ 26-6-106(3)~~, C.R.S., any rule or standard which, in ~~his or her~~their opinion, poses an undue hardship on the person, facility, or community.

   a. "Undue hardship" is defined as a situation where compliance with the rule creates a substantial, unnecessary burden on the applicant or licensee's business operation or the families or community it serves, which reasonable means cannot remedy. An undue hardship does not include the normal cost of operating the business.

   b. Emergency hardship appeals are requests by applicants or licensees to excuse noncompliance with a specific child care licensing rule due to urgent, significant, and unexpected situations outside the applicant's or licensee's control. Specific situations that may be considered "emergencies" under this paragraph include, but are not limited to:

1) Natural disasters;

2) Infectious disease outbreaks;

3) Mold outbreaks; or

4) Acts of nature or an accident resulting in structural damage to the child care facility.~~; or~~

~~5) For foster care homes and residential child care facilities, an immediate, child(ren) specific, emergency placement, situation which may disrupt placement, or situation posing a safety risk to a child(ren) in out-of-home placement.~~

2. Such appeal must be submitted to the State Department in writing within sixty (60) calendar days from the date on which the rule, standard, or emergency situation allegedly created the hardship. The applicant or licensee or their designated representative must send an appeal on the state-prescribed form to the appropriate division. Each rule appealed requires an individual appeal and applicable fee. If the appeal is an emergency hardship appeal, the applicant or licensee must mark it as such on the state-prescribed form.

3. When submitting an appeal, the applicant or licensee must consider the impact on the health, safety, and wellbeing of any children in care and include a proposed alternate compliance plan.

4. The State Department must consider the impact of an appeal on the health, safety, and wellbeing of the children in care, which must take priority over any undue hardship alleged, when determining whether an appeal should be granted.

5. If the State Department grants an appeal for undue hardship, it will issue the applicant or licensee an official decision notification letter temporarily excusing the applicant or licensee from compliance with the appealed rule or standard and accepting the alternate compliance plan.

B. Stringency Appeals

1. Any applicant or licensee who has applied for or been issued a license to operate a child care facility ~~or child placement agency~~ has a right to appeal, pursuant to section 26.5-5-314(5)~~§ 26-6-106(3)~~, C.R.S., any violation of a child care licensing rule cited in a report of inspection, on the basis that the rule has been too stringently applied by a representative of the State Department. “Stringency,” as used in this rule s~~S~~ection 2.115~~7.701.13~~, means the child care licensing representative applied rules too strictly, improperly, or unfairly. Disputes over the factual accuracy of a cited violation are not reviewable under this provision and must be resolved with the licensing representative’s supervisor.

2. Such appeal must be submitted to the State Department in writing within sixty (60) calendar days from the date of the report of inspection at issue. The applicant or licensee or their designated representative must send an appeal on the state-prescribed form to the appropriate division. Each rule citation requires an individual appeal and applicable fee.

3. When submitting an appeal, the applicant or licensee must provide all evidence that it believes shows the rule was applied too stringently.

4. The State Department must consider the impact of an appeal on the health, safety, and wellbeing of the children in care.

5. If the State Department finds a licensing rule was too stringently applied in the appealed citation, it will issue the applicant or licensee a new report of inspection with that citation removed, which shall for all purposes supersede the original report of inspection.

C. Materials Waiver Requests

1. A child care center that is applied for or has been issued a license may request a waiver, pursuant to section 26.5-5-313~~§ 26-6-105.7~~, C.R.S., to use certain hazardous materials in its program or curriculum that would otherwise violate child care licensing rules.

2. The child care center must submit a materials waiver request in writing on the state-prescribed form to the appropriate division. Each rule for which waiver is requested requires an individual request and applicable fee. If the request also seeks to remove a citation on a report of inspection involving the materials, it must be submitted within sixty (60) calendar days from the date of the report of inspection; otherwise, it may be submitted at any time.

3. A child care center requesting a materials waiver must adopt a safety policy, included with the waiver request, that provides that:

   a. Early childhood teachers are trained in the use of the specific material(s) in a way that provides reasonable, developmental-and age-appropriate safety provisions for children;

   b. Current training certificates are provided for each staff/classroom where the materials waiver is being sought. Training must be completed through nationally recognized programs related to the curriculum or philosophy, or through other State Department-approved training, curriculum, or program validation; and,

   c. Parents are notified in writing regarding the use of the hazardous materials in the child care center. The notice must include all of the potential safety risks associated with the materials. The child care center must obtain signed parental consent forms acknowledging awareness of the risks in using the materials in the child care center prior to implementing use of the identified materials and prior to any newly enrolled children attending the center after the waiver is implemented.

4. The State Department must consider the impact of a materials waiver request on the health, safety, and wellbeing of the children in care.

5. If the State Department grants a materials waiver request, it will issue the child care center an official decision notification letter allowing the use of the requested materials according to the provided safety policy. The applicant or licensee must post the decision letter next to the child care license until the letter's expiration date. If there is no expiration date, the decision letter expires three (3) years from the date of the letter. The approved waiver must be in place before using materials that pose a risk to children.

D. Administrative Review and Appeal Panel Procedures

1. The applicant or licensee must comply with all child care licensing rules and standards, including the rule(s) subject to an appeal or materials waiver request, until the applicant or licensee has received a written decision granting the appeal or waiver.

2. The State Department will receive, review, and schedule all appeals and materials waiver requests for review by the appeal panel constituted under section 26.5-5-314(5)~~§ 26-6-106(3)~~, C.R.S.

a. For hardship appeals, the State Department may propose that the appeal panel grant one or more appeals as part of a consent agenda, which the appeal panel may approve with a single vote; except if any panel member objects to the consent agenda, the appeals on such agenda must be decided individually. The appeal panel may not deny appeals by consent agenda.

b. For emergency hardship appeals, the State Department may administratively grant the appeal if it meets the definition of an emergency situation and the proposed alternate compliance plan adequately protects the health, safety, and wellbeing of children in care. If the State Department does not administratively grant the emergency hardship appeal, it must schedule the appeal for review by the appeal panel.

c. For materials waiver requests, the State Department will administratively grant or deny the waiver request within sixty (60) days after receipt of the request. If it denies a waiver, the State Department must provide notice in its decision of the child care center's right to appeal the denial within forty-five (45) days and the center's right to meet with State Department personnel as part of that appeal.

d. If a child care center appeals the denial of a materials waiver request within forty-five (45) days of the denial, the State Department will schedule the appeal for review by the appeal panel within forty-five (45) days of the appeal. The entire appeal process must not last longer than one hundred (100) days from the date of the notice of denial.

3. The appeal panel will adopt a written decision recommending that the State Department grant, deny, or grant with modifications an appeal or materials waiver request. The State Department must send an official decision letter, including the written decision of the appeal panel, to the applicant or licensee, within ten (10) days from the date of the appeal panel meeting.

a. For hardship appeals and materials waiver requests, the official decision letter must be posted next to the child care license until its expiration date. If there is no expiration date, the letter expires three (3) years from its date.

b. If the State Department approves a hardship appeal or materials waiver request and the applicant or licensee wishes to make changes to the alternate compliance plan or safety policy submitted with the original appeal or request, the applicant or licensee must submit a new hardship appeal or materials waiver request.

c. If, after the State Department approves a hardship appeal or materials waiver request, the applicant or licensee violates the terms and conditions described in the approved alternate compliance plan, approved safety policy, or official decision letter, the State Department's approval will immediately be rescinded and considered null and void. For purposes of this provision, any injuries, accidents, or founded complaints or investigations related to the appealed or waived licensing rule constitute a violation.

4. Hearing requests

a. For hardship or stringency appeals, if an applicant or licensee is aggrieved by the decision of the State Department, the applicant or licensee may request an administrative hearing pursuant to section§ 24-4-105, C.R.S. Written requests for an administrative hearing must be received in writing within 30 calendar days

from the date the applicant or licensee received the State Department's decision. In all such administrative hearings, the applicant or licensee will bear the burden or proof by a preponderance of the evidence.

b. For appeals from denials of materials waiver requests, the State Department's decision is a final agency decision subject to judicial review pursuant to section~~§~~ 24-4-106, C.R.S.

~~7.701.14~~2.115 CIVIL RIGHTS

All facilities licensed under the Child Care Licensing Act are subject to the following federal laws and regulations: the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. section~~§~~ 2000D *et seq*. (2018), and its implementing regulation, 45 C.F.R. Part 80 (2018); the Age Discrimination Act of 1975, 42 U.S.C. sections~~§§~~ 6101-6017 (2018) and its implementing regulation, 45 C.F.R., Part 91 (2018); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section~~§~~ 794 (2018), and its implementing regulation, 45 C.F.R. Part 84 (2018). All of which are hereby incorporated by reference. No later editions or amendments are incorporated. These statutes and regulations are available for public inspection and copying at the Colorado Department of~~-~~ Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246~~Human Services 1575 Sherman St., 8th floor, Denver, Colorado 80203~~, during regular business hours. These statutes and regulations are also available at no cost at http://uscode.house.gov and http://www.ecfr.gov.

All facilities licensed under the Child Care Licensing Act are also subject to Titles I through V of the Americans with Disabilities Act, 42 U.S.C. section~~§~~ 12101 *et seq*. (2012), and it's implementing regulation, 29 C.F.R., part 1630 (2018), which are hereby incorporated by reference. No later editions or amendments are incorporated. These statutes and regulations are available for public inspection and copying at The Colorado Department of ~~-~~Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246~~Human Services 1575 Sherman St., 8th floor, Denver, Colorado 80203~~, during regular business hours. These statutes and regulations are also available at no cost at http://uscode.house.gov and http://www.ecfr.gov.

Decisions related to the enrollment ~~, placement,~~ or dismissal of a child with a disability or chronic condition must be in compliance with the Americans with Disabilities Act. The facility must provide reasonable accommodations for the child with a disability who has special needs.

A lack of independent ambulation or the need for assistance in feeding, toileting, or dressing or in other areas of self-care cannot be used as sole criteria for enrollment or placement or denial of enrollment ~~or denial of placement~~. Efforts must be made to accommodate the child's needs and to integrate the child with his/her peers who do not have disabilities.

BACKGROUND CHECKS

~~7.701.32~~2.116 ~~USE OF RECORDS AND REPORTS OF~~ CHILD ABUSE OR NEGLECT FOR BACKGROUND AND EMPLOYMENT INQUIRIES

A. An operator of a licensed facility, guest child care facility as defined in section 26.5-5-303(6)~~26-6-102(16)~~, C.R.S., or an exempt family child care home provider must submit a request to determine if an operator, applicant for employment or current employee has been found responsible for a confirmed report of child abuse or neglect in the State Department's automated system (Trails).~~B. Foster Homes must also obtain a child abuse or neglect records check for each adult eighteen (18) years of age or older living in the home in every state where the adult has resided in the five 5 years immediately preceding the date of application.~~

B~~C~~. An child abuse or neglect records check is not necessary regarding out-of-state employees of a children's resident camp or school-age child care center for a camp or center that is in operation

for fewer than ninety (90) calendar days; out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.

C~~D~~. The Trails child abuse or neglect records request must be made on the State prescribed form, accompanied by the required fee ~~(for fee assessment see section 7.000.73)~~ within the following required time frames:

1. Child care centers (less than 24-hour care), school-aged child care facilities, family child care homes, and qualified exempt providers must meet the following:

   a. For all individuals whose activities involve the care or supervision of children or who have unsupervised access to children, requests must be submitted and successfully completed prior to caring for children or allowing unsupervised access to children.

      1) Individuals who have obtained a successfully completed CBI or FBI record check may care for children, for no longer than ninety (90) calendar days, while waiting for all other required background checks to be completed. The individual must be supervised at all times by an individual who has successfully completed all required background checks.

   b. For each adult eighteen (18) years of age or older, residing in a licensed family child care home or a qualified exempt provider home, requests must be submitted at time of application.

   c. For each adult eighteen (18) years of age or older, who begin residing in the home after care begins, requests must be submitted within five (5) calendar days of when he or she begins residing in the home, and these adults must not be allowed unsupervised access to children in care until all background checks have been successfully completed.

2. All other requests except those specified in rule section 2.117(C)(1)~~7.701.32.D.1~~ must be submitted within ten (10) calendar days of the first day of employment for each employee or facility.

D~~E~~. The Trails child abuse and neglect records request must be made within ten (10) calendar days of the first day of employment for each employee or facility on the State prescribed form, accompanied by the required fee ~~paid by check or money order (for fee assessment see section 7.000.73)~~.

E~~F~~. The Trails child abuse and neglect records request must be accompanied by the individual's written authorization to obtain such information from the State automated system, if applicable.

F~~G~~. The State Department will inform the requesting party in writing of whether the individual has been confirmed to be a person responsible for an incident of child abuse or neglect.

1. If the result of the inquiry is that the individual has been confirmed as responsible for an incident of child abuse or neglect, the State Department must provide the requesting party with information regarding the date of the reported incident, the type of abuse or neglect with the severity level, and the county department that confirmed the report.

2. If the result of the inquiry is that the individual has not been confirmed to be responsible for an incident of child abuse or neglect, the State Department must notify the requesting party of this fact.

G~~H~~. The information provided by the State Department must serve only as the basis for further investigation. The director or operator may inform an applicant or employee that the report from the State Department's automated system was a factor in the director or operator's decision with regard to the applicant or employee's employment.

H~~I~~. Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in the State Department's automated system to persons not permitted access to such information commits a Class 1 misdemeanor and must be punished as provided in section 18-1.3-501(1), C.R.S.

I~~J~~. Every five (5) years, all child abuse and neglect inquiry background checks must be renewed by resubmitting an inquiry form and current fee to the State Department for processing. An updated clearance letter or verification of the submission of the inquiry form must be obtained before five (5) years from the date reflected on the current clearance letter.

J~~K~~. The results of the abuse and neglect inquiry must be maintained at the center, facility, or agency and must be available for review upon request by a Licensing Specialist.

2.117~~7.701.33~~ CRIMINAL RECORD CHECK

A. Criminal records checks are required under the following circumstances:

1. In order to obtain any Colorado bureau of investigation (CBI) and/or Federal Bureau of Investigation (FBI) fingerprint criminal history records, each applicant listed below must have their fingerprints taken and processed at a vendor approved by CBI. Approved vendors may be located using the CBI website at Colorado.gov/cbi. Payment of the fee for the criminal record check is the responsibility of the individual being checked, identified as follows:

a. Each applicant for an original license for a center, facility, or agency and any adult eighteen (18) years of age or older who resides in the licensed center, facility or agency.

b. Each exempt family child care home provider who provides care for a child and each individual who provides care for a child who is related to the individual (referred collectively in this rule section as a "qualified provider"), if the child's care is funded in whole or in part with money received on the child's behalf from the publicly funded Colorado Child Care Assistance Program; and, any adult eighteen (18) years of age or older who resides with a qualified provider where the care is provided.

~~c. Applicants for an original certificate for a foster care home, and any adult eighteen (18) years of age or older who resides in the foster care home.~~

~~d. Any person working in a twenty-four (24) hour child care agency or facility.~~

2. Each applicant for an original license for a Neighborhood Youth Organization must comply with the criminal background check requirements found at section 26.5-5-308~~26-6-103.7(4)~~, C.R.S.

The applicant must ascertain whether the person being investigated has been convicted of felony child abuse as specified in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102(9), C.R.S. The Neighborhood Youth Organization must not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

B. Only in the case of a children's resident camp or school-age child care center, out-of-state persons employed in a temporary capacity for less than ninety (90) days are not required to be fingerprinted to obtain a criminal record check. Each person exempted from fingerprinting and being checked with the State Department's automated system must sign a statement which affirmatively states that she/he has not been convicted of any charge of child abuse or neglect, unlawful sexual offense, or any felony. Out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.

Prospective employers of such exempted persons must conduct reference checks of the prospective employees in order to verify previous work history and must conduct personal interviews with each such prospective employee.

C. At the time the annual declaration of compliance (see rule section 2.106(B)~~7.701.35.B~~) is submitted to the Department, except as required per this rule section ~~7.701.33.C.1 and 7.701.33.C.2~~2.117(C), a criminal record check is required only for adults living at the licensed facility who have not previously obtained one. Because the CBI provides the Department with ongoing notification of arrests, owners, applicants, licensees, and persons who live in the licensed facility who have previously obtained a criminal record check, they are not required to obtain additional criminal record checks.

1. Any resident of the family child care home or qualified exempt provider home turning eighteen (18) years of age shall complete the fingerprint process at an approved vendor fourteen (14) calendar days prior to their 18th birthday.

2. The fingerprint process shall be completed at an approved vendor within five (5) calendar days of when any new resident, eighteen (18) years of age or older, begins residing in a family child care home or qualified exempt provider home. Adults must not be allowed unsupervised access to children in care until all background checks have been successfully completed.

D. Each owner and~~,~~ employee sixteen (16) years of age or older of a facility or agency shall complete the fingerprint process at an approved vendor. Payment of the fee for the criminal record check is the responsibility of the individual being checked or the facility or agency. The results of the criminal record check, the CBI and FBI response letters, must be maintained at the home, center, facility, or agency and must be available for review upon request by a Licensing Specialist.

1. Employees and volunteers who are transferring from one child care facility to another may have their CBI, but not their FBI, fingerprints transferred if they complete the following process:

a. Employees must contact CBI to determine if they are eligible for transfer. If eligible, employees must visit a CBI approved vendor and indicate they are completing a criminal background check (CBC) transfer per ~~C.R.S.~~section 26.5-5.-316 (1)(a)(I)(D)~~26-6-107(1)(a)(I)(C.7)~~, C.R.S. Employees must pay the current transfer fee.

b. When an individual leaves employment, the facility must submit to the Department a completed Notification of Name Removal form to request the removal of the individual's name from their facility license number in the CBI database.

c. School district employees who currently work at a child care facility must have their criminal history report linked to the license number of the child care facility.

2. Except as required per rule section ~~7.701.33.D.3~~2.117(D)(3), any adult volunteer, working as a staff member to meet the required staff-child ratio or staff qualifications, who works fourteen (14) days (112 hours) or more in a calendar year shall complete the fingerprint process at an approved vendor. The results of the criminal record check must be maintained at the facility or agency and must be available for inspection by a Licensing Specialist. An employee operating as a volunteer to meet required staff-child ratio that does not have a completed background check on file must be supervised at all times by a qualified staff member who has successfully completed all background checks.

3. Criminal background check requests for volunteers, whose activities involve the care and supervision of children; or who have unsupervised access to children, must be submitted and successfully completed prior to caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-aged child care facilities, family child care homes, and qualified exempt provider homes.

4. Requests for a criminal record check, other than those required per this rule section 2.117(D)(4)~~7.701.33.D.4.a, b~~ must be completed at an approved vendor within five (5) working days of the day that the individual begins to work at the facility or agency.

   a. Criminal background check requests must be successfully completed prior to an individual caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-aged child care facilities, family child care homes, and qualified exempt provider homes.

   b. A National Sex Offender Registry check request must be submitted and successfully completed prior to an individual caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-aged child care facilities, family child care homes, and qualified exempt provider homes.

5. Every five (5) years, requests for FBI criminal record checks must be renewed by completing the fingerprint process at an approved vendor. An updated clearance letter or verification of the submission of the request must be obtained prior to five (5) years from the date reflected on the current clearance letter.

6. Facilities and agencies that hire individuals who have been convicted of any felony, except those listed in rule ~~sub~~section 2.117(D)(7)~~8.a.-f~~ below, unlawful sexual behavior, or any misdemeanor, the underlying factual basis of which has been found by the court on record to include an act of domestic violence must inform the State Department of that hiring within fifteen (15) calendar days of receiving knowledge of the conviction.

7. A child care facility shall not employ~~, or a child placement agency shall not employ~~ or certify~~,~~ an individual who has been convicted of:

   a. Child abuse, as specified in section 18-6-401, C.R.S.

   b. A crime of violence, as defined in section 18-1.3-406(2)(a)(I), C.R.S.

c. An offense involving unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S.

d. A felony, 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.

e. A felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate.

f. A pattern of felony or misdemeanor convictions within the ten (10) years immediately preceding submission of the application. "Pattern of misdemeanor" shall include consideration of section 26.5-5-317~~26-6-108~~(2), C.R.S., regarding suspension, revocation and denial of a license, and shall be defined as:

1. Three (3) or more convictions of third (3rd) degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.; ~~or~~

2. Five (5) misdemeanor convictions of any type, with at least two (2) convictions of third (3rd) degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.; or~~,~~

3. Seven (7) misdemeanor convictions of any type.

g. Any offense in any other state, the elements of which are substantially similar to the elements listed in this rule ~~sub~~section 2.117(D)(7)~~a-f~~.

E. Payment of the fee for the FBI check is the responsibility of the individual who is obtaining the check or the facility or agency. Certified foster parent(s) or any person eighteen (18) years of age or older who resides with a certified foster parent must obtain a criminal record check from the FBI regardless of the length of residence in Colorado.

F. The Department may deny, revoke, suspend, change to probationary or fine a child care facility ~~or child placement agency~~ if the applicant(s), an affiliate of the applicant, or any person living with or employed by the applicant has been found to violate any of the provisions set forth in section 26.5-5-317(2)~~26-6-108(2)~~, C.R.S.

G. The Department may deny an application for a child care facility license ~~or a child placement agency license~~ if the applicant is a relative affiliate of a licensee, as described in section 26.5-5-303(1)(d)~~26-6-102(1)(d)~~, C.R.S., of a child care facility ~~or child placement agency~~, which is the subject of a previous negative licensing action or is the subject of a pending investigation by the State Department that may result in a negative licensing action.

H. For all CBI fingerprint-based criminal history record information checks required in this rule section~~s~~ 2.11X and 2.117~~7.701.33~~, including those confirming a criminal history as well as those confirming no criminal history, the State Department will conduct a comparison search on the State Judicial Department~~"~~s court case management system and the sex offender registry of the Colorado Department of Public Safety. The court case management search must be based on name, date of birth, and address, in addition to any other available criminal history data that the State Department deems appropriate, is used to determine the type of crime(s) for which a

person was arrested or convicted and the disposition thereof. The sex offender registry search is used to determine whether the address of a licensee or prospective licensee is listed as belonging to a registered sex offender, except that:

1. County departments of human or social services must conduct sex offender searches in the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice prior to certification and annually; include a copy in the provider record using the following criteria at a minimum:

    a. Known names and addresses of each adult residing in the foster care home or kinship foster care home; and~~,~~

    b. Address only, of the foster care home or the kinship foster care home.

~~2. Child placement agencies must conduct sex offender searches in the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice prior to certification and annually, include a copy in the provider record using the following criteria at a minimum:~~

~~a. Known names and addresses of each adult residing in the foster care home or kinship foster care home; and,~~

~~b. Address only of each adult residing in the foster care home or the kinship foster care home.~~

I. Portability of Background Checks

1. Where two or more individually licensed facilities are wholly owned, operated, and controlled by a common ownership group or school district, a fingerprint-based criminal history records check and a check of the records and reports of child abuse or neglect maintained by the State Department, completed for one of the licensed facilities of the common ownership group or school district pursuant to this rule section for whom a criminal records check is required under section 26.5-5-316~~26-6-107~~, C.R.S., may satisfy the records check requirement for any other licensed facility under the same common ownership group or school district. A new fingerprint-based criminal history records check or new check of the records and reports of child abuse or neglect maintained by the Department is not required of such an individual if the common ownership group or school district maintains a central records management system for employees of all its licensed facilities; takes action as required pursuant to section 26.5-5-309~~26-6-104~~, C.R.S., when informed of the results of a fingerprint-based criminal history records check or check of the of records and reports of child abuse or neglect maintained by the Department that requires action pursuant to the Child Care Licensing Act; and informs the State Department whenever an additional licensed facility comes under or is no longer under its ownership or control.

2. When a licensee is inspected pursuant to the Child Care Licensing Act and records regarding CBI and FBI fingerprint-based criminal background checks, as well as records and reports of child abuse and neglect maintained by the State Department, and the comparison search on the State Judicial Department's court case management system are held at a central records management system, the licensee must be afforded fourteen (14) calendar days to provide to the State Department documentation necessary to verify that employees at the licensed facility have the required records related to fingerprint-based criminal background checks.

J. State-based background checks

1. The following background check requests must be submitted and successfully completed for each state an individual has resided in, in the past five years, prior to an individual caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-aged child care facilities, family child care homes, and qualified exempt provider homes:

    a. State criminal history check

    b. State sex offender registry check

    c. State abuse and neglect registry check

ADMINISTRATION

~~7.701.34~~2.118 FIRE INSPECTIONS, ~~AND~~ HEALTH INSPECTIONS, AND~~,~~ ZONING CODES

A. Prior to the original license being issued, following the renovation of the facility that would affect the licensing of the facility and at least every two (2) years thereafter, all child care facilities except family child care homes and Neighborhood Youth Organizations must be inspected and obtain an approving inspection report from the local department of health or the Colorado Department of Public Health and Environment and from the local fire department. These reports must be maintained at the facility and be available for review upon request by a Licensing Specialist.

B. Prior to the original license being issued, all child care facilities, except for foster homes and specialized group facilities, that are providing care for three or fewer children who are determined to have a developmental disability by a community centered board or who have a serious emotional disturbance, must submit to the State Department written approval from the local zoning department approving operation of the facility. The approval must include the address of the child care facility and the ages and number of children to be served. The facility must also submit written zoning department approval to the State Department any time there is a change to the license, including moving the facility to another location, increasing the capacity, or adding different ages of children.

C. All child care facilities must operate in compliance with local planning and zoning requirements of the municipality, city and county, or county where the facility is located.

~~7.701.5 ADMINISTRATION~~

~~7.701.51~~2.119 GOVERNING BODY

A. The governing body must be identified by its legal name on the original application and annual continuation notice. The names and addresses of individuals who hold primary financial control and officers of the governing body must be fully disclosed to the State Department.

B. The governing body must demonstrate to the State Department, upon request, that there is sufficient financial support to operate and maintain the facility in accordance with all general licensing rules defined in rule section 2.103~~7.701~~, the rules regulating the specific type of facility, and the goals and objectives of the facility.

~~7.701.52~~2.120 REPORTS~~A. Critical incident reporting for 24-hour agencies, facilities and day treatment centers:~~

~~Within twenty four (24) hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility or within twenty four (24) hours of a child's return to the facility:~~

1. Death

a. Report any child/youth death in the facility or foster home while a child has an open placement, to include while a child is on or off grounds;

b. Report death of a child/youth while a child is on the premises of a day treatment center;

c. Report death of staff while on duty;

d. Report death of foster parent with child(ren)/youth in placement; and

e. Report death of volunteer or visitor while on premises.

2. Abuse and neglect

a. Report any allegation, suspicion, reasonable cause to know, observation or condition of physical, sexual, verbal, emotional, psychological, or financial abuse to a child/youth when they are in placement or on the premises;

b. Report any allegation, suspicion, reasonable cause to know, observation or condition of physical, deprivation of needs, medical, supervisory, emotional, psychological, or financial neglect to a child/youth while they are in placement or on the premises; and

c. Report notification of an open investigation conducted by the county department.

3. Injury

a. Report any serious injury to a child/youth that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

b. Report any serious injury in which there is no known cause or due to alleged lack of supervision;

c. Report any injury, bruise, or abrasion on the child/youth that occurs as a result of a physical management.

d. Report any injury to a foster parent, staff, volunteer or visitor as a result of an altercation with a child/youth.

4. Illness

a. Report any serious illness that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

b. Report when the wrong medication or dosage is given, or when the prescribed medication is not given to the child/youth, which results in an adverse side effect (physiological or psychological) which requires treatment from a medical professional outside of the facility to address the adverse effects and ensure the safety of the child/youth to sustain life;

c. A reportable disease, as required by the Colorado Department of Public Health and Environment, of a child or staff member;

d. Report any suicidal attempt by a child/youth that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;

~~**e. Report any self-injurious behavior by a child/youth that requires emergency medical attention by a health care professional outside of the facility or admission to a hospital;**~~

~~**f. Report if a child/youth is placed on a 72-hour/M1 hold;**~~

~~**g. Report if a child, foster parent, or staff on duty receives medical or emergency attention outside of the facility as a result of a drug or alcohol related incident.**~~

~~**5. Emergency response**~~

~~**a. Report if a fire department responds to a fire;**~~

~~**b. Report a hazardous situation that occurs that could have possibly threatened the lives of other people around a facility or foster home;**~~

~~**c. Report incidents that result in law enforcement taking control of a situation or taking control of a facility or foster home;**~~

~~**d. Report any major or/credible threat to the security and/or safety of a facility, foster home, or child/youth in out-of-home care;**~~

~~**e. Report if a law enforcement agency files charges; issues a summons or citation to a child/youth, and/or a child/youth is arrested while the child/youth has an open placement at the facility or foster home, to include when child/youth is on or off grounds;**~~

~~**f. Report if a child/youth leaves without consent if under the age of 18 and does not return to the facility or foster home within 24 hours;**~~

~~**g. Report if division of youth services child/youth escapes the facility or foster home.**~~

~~**A report of a critical incident must be submitted directly through the Colorado Department of Human Services, Division of Child Welfare, Trails automated system.**~~

A~~B~~. Reporting for family child care homes, child care center, preschools, school-age child care, children's resident camps and neighborhood youth organizations.

1. Within twenty-four (24) hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility or within twenty-four (24) hours of a child's return to the facility the licensee must report in writing to ~~The Office of Early Childhood~~the Colorado Department of Early Childhood, Division of Early ~~Care And~~ Learning, Licensing, and Administration the following critical incidents involving a child in the care of the facility or a staff member on duty:

   a. ~~All deaths~~Any fatality including the death of a child, staff member or volunteer as a result of an accident, suicide, assault, Sudden Unexpected Infant Death or any natural cause while at the facility, or while on authorized or unauthorized leave from the facility. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form to the State Department within 24 hours of the incident.

   b. An injury to a child ~~or staff member~~ that requires ~~emergency~~ medical attention by a health care professional or admission to a hospital, whether or not treatment was given. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you

must use the paper form, and submit the form to the State Department within 24 hours of the incident.

c. A child or staff member with a reportable disease, as defined by the Colorado Department of Public Health and Environment at 6 CCR 1009-1~~:1~~, Appendix A (February 15, 2023~~2019~~), which is hereby incorporated by reference. No later editions or amendments are incorporated. These statutes and regulations are available for public inspection and copying at the Colorado Department of ~~Human Services~~Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246~~1575 Sherman St., 8TH floor, Denver, Colorado 80203~~, during regular business hours. These statutes and regulations are also available at no cost from the Colorado Department of Public Health and Environment at 4300 Cherry Creek Drive South, Denver, Colorado 80246 or at www.sos.state.co.us/ccr. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form to the State Department within 24 hours of the incident.

d. Any allegation of physical, sexual, or emotional abuse or neglect to a child that results in a mandatory report to law enforcement or a county department of human or social services agency, or the child abuse reporting hotline as described in section 19-3-304, C.R.S.

e. Any fire that is responded to by a local fire department.

f. Any major threat to the security of a facility including, but not limited to, a threat to kidnap a child, riots, bomb threats, hostage situations, use of a weapon, drive by shootings, active shooter situations, lock downs, or lock out situations.

g. A drug or alcohol related incident involving a staff member or a child that requires outside medical or emergency response.

h. An assault which results in a report to law enforcement, as defined by sections 18-3-201 through 18-3-204, C.R.S., by a child upon a child; a child upon a staff member, volunteer or other adult; a staff member, volunteer, or other adult upon a child, other staff member or other adult.

i. A suicide attempt by a child at the facility which requires emergency intervention.

j. Felony theft or destruction of property by a child at the facility for which law enforcement is notified.

k. Any police or sheriff contact with the facility ~~for a crime committed by a resident while in placement at the facility~~.

l. Any damage to the facility as a result of severe weather, fire, flood, mold or other natural disaster, or damage to the facility by any means that prevents the facility from normal operation.

2~~C~~. Reports Made to the State Department within Ten (10) Working Days.

a~~1~~. Any legal action against a facility, agency, owner, operator, or governing body that relates to or may impact the care or placement of children.

b~~2~~. Change of director of facility or agency; and

c~~3~~. Closure of the facility or agency.~~;~~

~~4. Change of placement supervisor for a child placement agency.~~

~~5. Change in Trails child placement agency (CPA) supervisor or trails public provider profile.~~

3~~D~~. Changes to a License Requiring Written Notification to the State Department and Prior State Department Approval.

a~~1~~. Proposed change in the number, ~~sex,~~ or age of children for whom the facility is licensed that differs from that authorized by the license.

b~~2~~. Changes in the physical facility or use of rooms for child care at a facility.

c~~3~~. Change of name of the facility or agency.

d~~4~~. Change of residents in the facility, not to include those residents placed in the facility by a county department ~~or a child placement agency~~.

~~7.701.55~~2.121 REPORTING OF LICENSING COMPLAINTS

Child care facilities must provide written information to parents or legal guardians at the time of admission and staff members at the time of employment on how to file a complaint concerning suspected licensing violations. For family child care homes, child care centers, preschools, school age child care, children's resident camps, and neighborhood youth organizations, the information must include the complete name, mailing address, and telephone number of the Colorado Department of Early Childhood~~Human Services, Division of Early Care and Learning. For 24-hour care agencies and facilities providing out-of-home care and day treatment centers, the information must include the complete name, mailing address, and telephone number of the Colorado Department of Human Services, Division of Child Welfare~~.

~~7.701.53~~2.122 REPORTING AND INVESTIGATING ~~OF~~ CHILD ABUSE

A. A child care facility must require each staff member of the facility to read and sign a statement clearly defining child abuse and neglect pursuant to state law and outlining the staff member~~''~~s personal responsibility to report all incidents of child abuse or neglect according to state law.

B. Pursuant to section 19-3-304, C.R.S., any caregiver or staff member in a child care facility who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact to the state hotline, county department of human or social services or local law enforcement agency.

C. At the time of admission the facility must give the child~~''~~s parent or guardian information that explains how to report suspected child abuse or child neglect.

~~7.701.54~~D. Investigation of Child Abuse

1~~A~~. Staff members of the county department of human or social services or a law enforcement agency that investigates an allegation of child abuse must be given the right to interview staff and children in care, and to obtain names, addresses, and telephone numbers of parents or legal guardians of children enrolled at the child care facility.

2~~1~~. An agency or facility must not interfere or refuse to cooperate with a child protection investigation.

3~~2~~. An agency or facility must not interview staff or children regarding the specific allegation(s) of child abuse or child neglect until the county department of human or social services and/or local law enforcement agency has had the opportunity to interview all appropriate individuals and completed their investigation.

4~~B~~. Any report made to the law enforcement authorities or a county department of human or social services of an allegation of abuse of any child at the child care facility will result in the temporary suspension or reassignment of duties of the alleged perpetrator to remove the risk of harm to the child/children if there is reasonable cause to believe that the life or health of the victim or other children at the facility is in imminent danger due to continued contact between the alleged perpetrator and the child/children at the facility. Such suspension or reassignment of duties will remain in effect pending the outcome of the investigation by the appropriate authorities.

~~7.701.56~~2.123 POSTING LICENSING INFORMATION

A. At all times during the operating hours of the facility, except for foster care homes, the facility/agency must post the current child care license in a prominent and conspicuous location easily observable by those entering the child care facility ~~or agency~~. ~~For foster care homes, the certificate must be available for review/upon request of the public.~~

B. At all times during the operating hours of a family child care home, child care center, school-age child care center, or children~~''~~s resident camp, the facility must post its most recent licensing inspection report or a notice as to where the report may be reviewed at the facility by the parent or legal guardian of a child or their designee.

C. At all times during the operating hours of a family child care home, child care center, preschool, school-age child care center, children's resident camp And neighborhood youth organization, the facility must post in a prominent and conspicuous location information regarding the procedures for filing a complaint with the Colorado Department of Early Childhood~~Human Services, Division of Early Care and Learning~~, including the telephone number and mailing address. ~~All 24-hour care agencies and facilities providing out-of-home care and day Treatment centers must post in prominent and conspicuous location information regarding the procedures for filing a complaint with the Colorado Department of Human Services, Division of Child Welfare, including the telephone number and mailing address. For foster care homes and child placement agencies, information for filing a complaint must be made available upon request.~~

D. All facilities, except family child care homes must post in every room of the child care facility, excluding bedrooms and living areas, the license capacity of the room and the staff-to-child ratio required by regulation to be maintained for the age of children cared for in the room.

~~7.701.62~~.124 ~~CONFIDENTIALITY OF~~ RECORDS

A. Confidentiality of Records

1. The records concerning the licensing of facilities and agencies are open to the public except as provided below.

2~~B~~. Anyone wishing to review a record must make a written request to the State Department.

3~~C~~. The following documents are confidential and not available for review:

a~~1~~. Information identifying children or their families;

b~~2~~. Scholastic records, health reports, social or psychological reports. These are available only to the person to whom the records pertain or his or her legal guardian;

c~~3~~. Personal references requested by the State Department; and

d~~4~~. Reports and records received from other agencies, including police and child protection investigation reports.

~~7.701.65~~B. Maintenance and Confidentiality of Child~~/Youth~~ Records

1~~A~~. Each licensed child care facility shall maintain records as required by the State Department pertaining to the admission, progress, health, and discharge of children in care at the facility.

a~~1~~. These records shall be made available to the state department upon request.

b~~2~~. These records shall be maintained and stored in a confidential format.

c~~3~~. All information regarding children and their families shall be kept confidential.

~~7.701.7~~C. ~~PARENTAL~~ Accessibility of Records

1~~A~~. During hours of operation, a facility must allow access to parents and guardians having legal custody of a child in care to those areas of the facility that are licensed for child care.

2~~B~~. During the hours of operation, the Facility's most recent licensing, fire department, and health department inspection reports must be accessible to parents and legal guardians of children in care or their designee and to parents and legal guardians considering placing their children in care at the facility.

3~~C~~. A facility does not violate this rule section when it restricts access by a parent, guardian or their designee to a child during an emergency as instructed by local authorities.

~~7.701.8~~D. Perjury ~~STATEMENT -~~

1. Application Forms for Employment with a Child Care Provider

a. Every application used in the state of Colorado for employment with a child care provider or facility, or for the certification of a foster home, must include the following notice to the applicant:

"Any applicant who knowingly or willfully makes a false statement of any material fact or thing in the application is guilty of perjury in the second degree as defined in section 18-8-503, C.R.S., and, upon conviction thereof, shall be punished accordingly."

~~7.701.9~~ GENERAL HEALTH RULES

~~7.701.91~~2.125 SMOKING AND TOBACCO PRODUCTS

Pursuant to sections 26.5-5-314(2)(e)~~26-6-106(2)(e)~~, 25-14-103.5, and 18-13-121, C.R.S., tobacco and nicotine products are prohibited by law from use in and around licensed child care facilities.

A. Smoking and tobacco product use is prohibited at all times while transporting children on field trips and excursions.

B. Smoking and tobacco product use is not prohibited in family child care homes during non-business hours.~~C. Foster parents are exempt from this rule when no children are in placement.~~

~~7.701.100~~2.126 EMERGENCY AND DISASTER PREPAREDNESS FOR CHILD CARE CENTERS, FAMILY CHILD CARE HOMES, SCHOOL-AGE PROGRAMS, AND CHILDREN'S RESIDENT CAMPS

A. Staff Training

1. Prior to caring for children, all staff must complete a State Department-approved training in emergency and disaster preparedness: Evacuation, Shelter in Place, Lockdown, and Active Shooter on Premises Plans for Children in Care. For seasonal children's resident camp programs, operating no more than 90 days per calendar year, at least one on site director must be trained in the State Department approved training~~.~~

~~B. Evacuation, Shelter in Place, Lockdown, and Active Shooter on Premises Plans for Children in Care.~~

2. Each staff member of the facility must be trained in fire safety and the use of available fire extinguishers and fire alarms.

2.127 EVACUATION, SHELTER IN PLACE, LOCKDOWN, AND ACTIVE SHOOTER ON PREMISES PLANS FOR CHILDREN IN CARE

1. All child care providers must have a written plan for: evacuating and safely moving children to an alternate site; lockdown; shelter in place; and an active shooter on premises. The plan must include provisions for multiple types of hazards, such as floods, fires, tornadoes, and active shooter situations. The plan must be updated as changes occur and reviewed annually. All employees of a child care provider must also be annually trained on the provider's written plan prior to caring for children, and retrained as changes occur.

a.~~1~~ "Lockdown drill" means a drill in which the occupants of a building are restricted to the interior of the building and the building is secured.

b~~2~~. "Shelter-in-place drill" means a drill in which the occupants of a building seek shelter in the building from an external threat.

c~~3~~. "Active shooter on premises drill" means a drill to address an individual actively engaged in killing or attempting to kill people in a confined space or other populated area.

2.128~~C.~~ REUNITING FAMILIES AFTER AN EMERGENCY OR DISASTER.

All child care providers must have a written plan for emergency notification of parents and reunification of families following an emergency or disaster.

2.129~~D.~~ CHILDREN WITH DISABILITIES AND THOSE WITH ACCESS AND FUNCTIONAL NEEDS~~.~~

All child care providers must have a written plan that accounts for children with disabilities as defined in 42 U.S.C. Section 12102 and those with access and functional needs as defined in the State Emergency Operations Plan (2019) The (SEOP). The state SEOP is hereby incorporated by reference. No later editions or amendments are incorporated. The state SEOP is available for public inspection and copying at the Colorado Department of ~~Human Services~~Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246~~1575 Sherman St., 8TH floor, Denver, Colorado,~~ during regular business hours. The state SEOP is also available for no cost from the Colorado Division of Homeland Security & Emergency Management at https://www.colorado.gov/pacific/dhsem/state-eop. The plan must include a specific requirement indicating how all children with special needs will be included in the emergency plan.

2.130~~E.~~ CONTINUITY OF OPERATIONS AFTER A DISASTER.

1. All child care providers must have a written plan for continuity of operations in the aftermath of an emergency or disaster. Components of the plan must include:

   a. Responsibility for essential staffing needs and predetermined roles during and after the emergency or disaster;

   b. Procedure for backing up or retrieving staff and children's files; and

   c. Procedure for protecting confidential and financial records.

2. During an emergency or other significant, unexpected event, a child care facility may request an emergency waiver to move to a temporary location or exceed capacity, on a temporary basis, to accept children and families from affected areas.

2.131~~F~~. FIRE, NATURAL DISASTER, AND EMERGENCY DRILLS.

1. Each staff member of the facility must be trained in fire safety and the use of available fire extinguishers and fire alarms.

2. Emergency drills, lockdown and active shooter on premises drills must be held at least quarterly but often enough so that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. Fire drills must be held monthly and be consistent with local fire department procedures. Tornado drills must be held monthly from March to October. A record of all emergency drills held over the past twelve (12) months must be maintained by the facility or center, including date and time of drill, number of adults and children participating, and the amount of time taken to evacuate.

3. Drills must be held at unexpected times and under varying conditions to simulate the conditions of an actual fire or other emergency event.

4. Drills must emphasize orderly evacuation under proper discipline rather than speed. No running should be permitted.

5. Drills must include suitable procedures for ensuring that all persons in the building, or all persons subject to the drill~~, actually~~ participate.

6. Fire alarm equipment must be used regularly in the conduct of fire exit drills. Hand bells or other alarm emanating devices may be used in lieu of fire alarm equipment if use of

fire alarm equipment is not feasible including, but not limited to, facilities operating in buildings where multiple unrelated tenants share a common fire alarm system.

7. If appropriate to the location of the facility, forest fire, and/or flood drills must be held often enough that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. A record of drills held over the past twelve (12) months must be maintained by the facility.

8. For children's resident camps~~,~~ and school age day camps, at least one fire drill must be held within twenty-four (24) hours of the commencement of each camp session. The dates of the fire drills must be recorded in the camp office.

9. There must be a carbon monoxide detector installed in the area of the child care facility as recommended by the manufacturer and in the area where children ~~and youth~~ sleep.

~~**7.701.200 THE REASONABLE AND PRUDENT PARENT STANDARD REQUIREMENTS FOR FACILITIES PROVIDING TWENTY-FOUR (24) HOUR OUT-OF-HOME CARE TO APPROVE ACTIVITIES FOR A CHILD OR YOUTH IN FOSTER CARE**~~

~~**Children and youth in foster care are entitled to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities as part of their well-being needs.**~~

~~**Providers must use a "reasonable and prudent parent standard" when determining whether to allow a child or youth in foster care, under the responsibility of the county or in non-secure residential settings under the Division of Youth Services (DYS), to participate in such activities following the criteria in both A. and B. below:**~~

~~**A. For an activity to be approved consistent with the reasonable and prudent parent standard, the activity must:**~~

~~**1. Maintain the health, safety, and best interests of each child or youth;**~~

~~**2. Encourage his/her emotional and developmental growth;**~~

~~**3. Be age or developmentally appropriate; and,**~~

~~**4. Be otherwise appropriate for the provider to approve.**~~

~~**B. When applying the reasonable and prudent parent standard and prior to approval of the activity, the provider must take reasonable steps to obtain or determine:**~~

~~**1. Adequate information about the child or youth, including the youth's particular religious, cultural, social, or behavioral attributes and preferences;**~~

~~**2. Behavioral and/or mental health stability of the child or youth;**~~

~~**3. The age or developmental appropriateness of the activity; and,**~~

~~**4. Whether the risk of reasonably foreseeable harm involved in the activity is at an acceptable level.**~~

~~**C. The county department of human or social services or licensed child placement agency responsible for the placement of the child/youth into care must complete the same state training in applying the reasonable and prudent parent standard.**~~

~~D. At least one (1) trained staff or administrator in a specialized group facility or Residential Child Care Facility (RCCF) must be designated as authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child or youth in extracurricular, enrichment, cultural, or social activities.~~

~~E. The rationale used to authorize an activity for a child or youth must be clearly documented in the facility records and provided in a timely manner to the county department of human or social services or DYS using the approved written reporting format.~~

~~1. The facility must consult with and obtain a current copy of the policy from the responsible county department of human or social services or DYS regarding activities that are considered appropriate for the facility to approve.~~

~~The responsible county department of human or social services or DYS may restrict certain activities based upon the documented exceptional needs and circumstances of a child or youth in foster care, which impact his/her unique safety needs.~~

~~2. The wishes of the parents/legal custodian must be considered, including cultural implications, whenever practical.~~

~~3. The facility may consult with the responsible agency for guidance about individual cases.~~

~~F. Providers must not incur liability to the State Department or to the county department of human or social services because of an extracurricular, enrichment, cultural, or social activity approved by the provider if the provider demonstrates compliance with the reasonable and prudent parent standard. In a child welfare investigation arising out of such an activity approved by the provider, the facility must not be founded for institutional neglect if the provider demonstrates compliance with the reasonable and prudent parent standard.~~

~~7.701.300 CULTURAL RESPONSIVENESS FOR RESIDENTIAL CHILD CARE FACILITIES, SPECIALIZED GROUP FACILITIES, HOMELESS YOUTH SHELTERS, CHILD PLACEMENT AGENCIES, DAY TREATMENT CENTERS, FOSTER CARE HOMES, AND SECURE RESIDENTIAL TREATMENT CENTERS.~~

~~A. All policies and procedures must reflect culturally responsive operations and a specific policy must be developed to ensure that the provider will implement and practice culturally responsive programming.~~

~~B. All staff members, interns, and foster parents must complete four (4) hours of initial training in cultural responsiveness and two (2) hours annually thereafter. Volunteers that work directly with youth two (2) or more times in a twelve (12) month period must complete four (4) hours of initial training in cultural responsiveness and two (2) hours annually thereafter. Members of governing body must complete two (2) hours of annual training in cultural responsiveness. Members of the board of directors must be given training in the agency's or facility's cultural responsiveness policies and procedures at the time they are appointed to the board of directors.~~

~~C. Assessments of youth and families must identify cultural factors and services must be responsive to the unique cultural needs of youth and families, as identified in the assessments.~~

~~7.701.400 TRAUMA-INFORMED CARE FOR RESIDENTIAL CHILD CARE FACILITIES, SPECIALIZED GROUP FACILITIES, HOMELESS YOUTH SHELTERS, CHILD PLACEMENT AGENCIES, DAY TREATMENT CENTERS, FOSTER CARE HOMES, AND SECURE RESIDENTIAL TREATMENT CENTERS.~~

A. All policies and procedures must be trauma-informed and a specific policy must be developed to ensure that the provider will implement and practice trauma-informed care and services.

B. All staff members, interns, and foster parents must complete four (4) hours of initial training in trauma-informed care and two (2) hours annually thereafter. Volunteers that work directly with youth two (2) or more times in a twelve (12) month period must complete four (4) hours of initial training in trauma-informed care and two (2) hours annually thereafter. Members of the governing body must complete two (2) hours of annual training in trauma-informed care. Members of the board of directors must be given training in the agency's or facility's trauma-informed care policies and procedures at the time they are appointed to the board of directors.

C. Assessments of youth and families must screen for a history of traumatic experiences and associated needs and services must be responsive to the needs of youth and families, as identified in the assessments.

701.500 TRAILS DATA ENTRY FOR RESIDENTIAL CHILD CARE FACILITIES, HOMELESS YOUTH SHELTERS, CHILD PLACEMENT AGENCIES, DAY TREATMENT CENTERS, AND SECURE RESIDENTIAL TREATMENT CENTERS.

A. Each facility or agency must apply to the State Department for permission to access the Trails system, to complete all functions assigned to their facility type.

1. Each facility or agency must have at least two (2) employees assigned to access the Trails system to enter critical incident reports as listed at 7.701.52.

2. Child placement agencies must have at least two (2) employees assigned to access the Trails system to enter original and renewal foster care certificates

3. Child placement agencies must have one (1) employee assigned to access the Trails system to review any child abuse and neglect history for foster care applicants, adoptive applicants, and other adults residing in the homes

B. The child placement employee who accesses the Trails system to review any child abuse and neglect history cannot also access the Trails system for critical incident reporting or entering foster care certificates

C. Each facility or agency must submit to the State Department the prescribed form to delete access for persons who are no longer employed or for employees whose access to Trails has been restricted by their employer or by the State Department.

7.702 RULES REGULATING CHILD CARE CENTERS THAT PROVIDE LESS THAN 24-HOUR CARE

2.200 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 *et seq*. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 *et seq*. (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, sections 26.5-5-301, *et seq*., C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.

The specific rulemaking authorities granted for child care centers include sections XXX, C.R.S.

2.201 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities. These rules and regulations shall govern the processes and procedures to become a licensed child care center program in Colorado. All child care centers must comply with the ~~current~~ "General Rules for Child Care Facilities" in rule section 2.100~~7.701~~; "Rules Regulating Child Care Centers that Provide Less than 24-hour Care" in rule section 2.200~~7.702~~; and "Rules Regulating Special Activities" in rule section 2.600~~7.719.;" 6 CCR 1010-7, "The Health and Sanitation Rules and Regulations Governing the Sanitation of Child Care Facilities in the State of Colorado C.R.S.; and the USDA CACFP Part 266.20(1.5).~~

Drop-in, part day, mobile preschool, teen parent, and other programs operated by public school districts must be in compliance with all rules found in this rule section. Additional rules or substitutions to rules can be found under rule sections 2.238, 2.239, 2.240, 2.241, and 2.242 ~~7.702.100~~.

2.202 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed child care centers caring for five (5) or more children with or without compensation.

~~Hardship waivers~~

~~Any applicant or licensee who has applied for or been issued a license to operate a childcare facility has a right to appeal, pursuant to § 26-6-106(3), C.R.S., any rule or standard which, in his or her opinion, poses an undue hardship on the person, facility, or community. An "undue hardship" is defined as a situation where compliance with the rule creates a substantial, unnecessary burden on the applicant or licensee's business operation or the families or community it serves, which reasonable means cannot remedy. An undue hardship does not include the normal cost of operating the business.~~

2.203~~7.702.1~~ DEFINITIONS

A. Child care centers that provide less than 24-hour care (referred to as "centers") provide comprehensive care for children when the parents or guardians are employed or otherwise unavailable to care for the children. Child care centers may operate twenty-four (24) hours a day, but the children are cared for at the center fewer than twenty-four (24) hours a day.

B. Child care centers that provide less than 24-hour programs of care include the following types of facilities:

1. A "large child care center" provides care for sixteen (16) or more children between the ages six (6) weeks and eighteen (18) years.

2. A "small child care center" provides care for up to fifteen (15) children between the ages of two (2) and eighteen (18) years.

3. An "infant program" provides care for children between the ages of six (6) weeks and eighteen (18) months.

4. A "toddler program" provides care for children between the ages of twelve (12) months (when walking independently or with a health care provider's statement indicating developmental appropriateness of placement in a toddler program) and thirty-six (36) months.

5. A "preschool" is a child care program for five (5) or more children between the ages of two and one-half (2 1/2) and seven (7) years.

6. A "mobile part-day preschool program" is a program with a mobile classroom that uses no permanent building on a regular basis, for children three (3) to seven (7) years of age, with no more than (8) eight children at any given time. Each class session must not exceed five (5) hours.

7. A "kindergarten program" provides a program for children the year before they enter the first grade. Only private kindergarten programs not regulated by the Colorado Department of Education are required to be licensed.

8. A "full day program" enrolls children for five (5) or more hours per day.

9. A "part-day program" enrolls children for a maximum of up to five (5) hours per day. Individual children shall not attend more than one (1), five (5) hour sessions per day.

10. A "drop-in child care center" provides occasional care for forty (40) or fewer children between the ages of twelve (12) months and thirteen (13) years of age for short periods of time not to exceed six (6) hours in any 24-hour period of time or fifteen (15) hours in any seven (7) day period of time.

11. A "teen parent program" provides care for children fourteen (14) days old to thirty-six (36) months and is operated by an accredited public school system on school premises. Infants between seven (7) and thirteen (13) days old may be accepted for care with written approval from a health care provider.

12. "Staff" and all references to staff or staff positions include paid staff, equally qualified volunteers, and substitutes under rule section 8.215~~7.702.45~~.

C. Licensed child care centers enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.

8.204~~7.702.2~~ ADMINISTRATION

Child care centers shall adhere to the requirements of this rule section and the ~~(See also~~ "Administration" ~~at~~ sections in rule sections 8.117, 8.118, 8.119, 8.120, 8.121, and 8.122~~7.701.5,~~ of the "General Rules for Child Care Facilities."~~)~~

A. The governing body must appoint a director who will be responsible to the governing body and who will be delegated the authority and responsibility for the operation of the center according to its defined purpose and policies.

B. The governing body must formulate the purpose and policies to be followed by the center. It must have a regular planned review of such purpose and policies to determine that the center is in compliance with licensing rules.

C. The governing body is responsible for providing necessary facilities, adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules.

D. Any center having a director assigned to a classroom must have qualified and adequate staff, allowing the director or qualified staff the ability to attend to the duties of a director as they arise.

E. The director of the center is responsible for administering the center in accordance with licensing rules. The director must plan and supervise the child development program, plan for or participate in selection of staff, plan for orientation and staff development, supervise and coordinate staff activities, evaluate staff performance, and participate in the program activities.

~~7.702.3~~ POLICIES AND PROCEDURES

2.205~~7.702.31~~ STATEMENT OF POLICIES AND PROCEDURES

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures.

B. The written policies and procedures must be developed, implemented, and followed, and must include at a minimum the following information:

1. The center's purpose and its philosophy on child care;

2. The ages of children accepted;

3. The hours the center is open, specific hours during which special programs are offered, and holidays when the center is closed;

4. The procedure regarding inclement and excessively hot weather;

5. The procedure concerning admission and registration of children including whether non-immunized or under immunized children are enrolled in the program;

6. An itemized fee schedule;

7. The procedure for identifying where children are at all times including times of transition;

8. The center's procedure on positive guidance, behavior expectations, positive instruction, supporting positive behaviors, as well as strategies and techniques for supporting children with challenging behaviors, including how the center will:

   a. Promote responsive and positive child, staff, and family relationships and interactions;

   b. Create and maintain a program-wide culture that promotes children's mental health, social, and emotional well-being;

   c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children; and,

   d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting, and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions.

9. How decisions are made and what steps are taken prior to the suspension, expulsion, or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance and positive instruction, and include documentation of the steps taken to understand and respond to challenging behavior including:

a. Identify and consult with an early childhood mental health consultant or other specialist as needed.

10. The procedure, including notification of parent(s)/guardian(s), for handling children's illnesses, accidents, and injuries;

11. The procedures for emergencies and disaster preparedness such as but not limited to lost children, tornadoes, fires, shelter in place, lockdown, active shooter on premises, reunification with families after emergency or disaster, and evacuating children with disabilities as specified in rule section 2.131~~7.701.100~~, of the "General Rules for Child Care Facilities";

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

13. The procedure for governing field trips, television and video viewing, and special activities, including staff responsibility for the supervision of children;

14. Media and internet usage policy outlining screen and media use related to their curriculum. The media plan must have information on ongoing communication with children about online safe practices for children over the age of five (5);

15. The procedure on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

16. The procedure for releasing children from the center only to persons for whom the center has written authorization and the procedure for picking-up the child during an emergency;

17. The procedures followed when a child is picked up from the center after the center is closed or not picked up at all, and to ensure that all children are picked up before the staff leave for the day;

18. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

19. The procedure for storing and administering children's medication and delegation of medication administration in compliance with section 12-255-101~~§12-38-132~~, *et. seq.*, C.R.S., of the "Nurse and Nurse Aide Practice Act";

20. The procedure concerning children's personal belongings and money;

21. The provision of meals and snacks;

22. The procedure for diapering, toilet training, and toileting;

23. The procedure for allowing visitors to the center;

24. The procedure for conducting parent and staff conferences to partner with the parents(s)/guardian(s) to discuss the child's progress, social, emotional, and physical needs;

25. The procedure for filing a complaint about child care, including the name, address and telephone number of the Colorado Department of Early Childhood (see rule section 2.121~~7.701.55~~ of the General Rules for Child Care Facilities);

26. The procedure for reporting of child abuse, including the name of the county department of social/ human services and phone number of where a child abuse report should be made (see rule section 2.122 7.701.53, of the General Rules for Child Care Facilities);

27. The procedure of the protection of infants from secondhand and thirdhand smoke;

28. The procedure for establishing safe sleep environments for infants including how staff will supervise and physically check on infants who are sleeping;

29. The procedure for dressing children appropriately for the weather; and,

30. Notification when child care service is withdrawn and when parent(s)/guardian(s) withdraw their children from the center.

C. Policies and procedures must be reviewed annually. Any changes must be incorporated and must be communicated to the parent(s)/guardian(s).

2.206 7.702.32 COMMUNICATION, EMERGENCY, AND SECURITY PROCEDURES

A. For security purposes, a sign-in/sign-out sheet or other mechanism for parents/guardians, or staff if children are being transported, must be maintained daily by the center. It must include, for each child in care, the date, the child's name, the time when the child arrived at and left the center, and the parent /guardian or staff member's signature or other unique identifier. For children who are transported, parent(s)/guardian(s) must verify the accuracy of the sign-in/sign-out sheet at least weekly.

B. The center must have a working telephone with the number available to the public. Emergency telephone numbers of the following must be posted near the telephone: a 911 notice, where 911 is available, or rescue unit if 911 isn't available; a hospital or emergency medical clinic; the local fire, police, and health departments; and Rocky Mountain Poison Control. The telephone must be available to staff at all times that the center is in operation.

C. The center must be able to provide emergency transportation to a health care facility at all times.

D. The director of the center, or the director's delegated substitute, must have a means for determining at all times who is present at the center.

E. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes at a minimum the date, time, visitor's name, and the purpose of the visit. At least one (1) piece of identification must be inspected for individuals who are unknown to personnel at the center.

F. The center must release the child only to an individual over the age of sixteen (16) for whom written authorization has been given by the parent(s)/guardian(s) and is maintained in the child's record (see rule section 2.208 7.702.34). In an emergency, the child may also be released to an individual for whom the child's parent/guardian has given verbal authorization. If the staff member who releases the child does not know the individual, identification must be required to assure that the individual is authorized to pick up the child.

G. The center must have a procedure for dealing with individuals not authorized by the parent or guardian of a child who attempts to have the child released to them.

H. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up.

2.207~~7.702.33~~ ADMINISTRATIVE RECORDS AND REPORTS

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of the time the child arrives at and departs from the center;

2. A list of current staff members, substitutes, and staffing patterns;

3. Copies of menus; and

4. A record of visitors to the center.

B. The center must submit to the Department as soon as possible, but not longer than twenty-four (24) hours, a written report about any child who has been separated from the group outside of the supervision of their assigned staff member or for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parent(s)/guardian(s) and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was separated from the group outside of their assigned child care provider~~last seen~~;

5. All actions taken to locate the child, including whether local authorities were notified; and~~,~~

6. The name of the staff person supervising the child.

C. All programs must register their operational status information in the Department's ~~Office of Early Childhood~~ provider status portal every calendar year ~~in the months of~~between April and October.

1. All programs must update their information any time their operational status changes during a declared state emergency.

D. All prospective and current staff members in the following roles must register with the Colorado Shines Professional Development Information System:

1. Large Center Director;

2. Large Center Assistant Director;

3. Small Center Director;

4. Early Childhood Teacher;

5. Infant Program Supervisor;

6. Infant Early Childhood Teacher;

7. Toddler Early Childhood Teacher;

8. Kindergarten Teacher;

9. Assistant Early Childhood Teacher; and~~,~~

10. Staff Aide.

2.208~~7.702.34~~ CHILDREN'S RECORDS

A. An admission record must be completed for each child prior to or at the time of the child's admission. This record must be updated annually and when changes occur. The admission record must include:

1. The child's full name, birth date, current address, and date of enrollment;

2. Parent(s)/guardian(s) names; home and e-mail addresses; telephone numbers, including home, work, and cell numbers; employer name and work address; and, any special instructions as to how the parent(s)/guardian(s) may be reached during the hours that the child is in care at the center;

3. Names, addresses, and telephone numbers of persons authorized to pick up the child from the center;

4. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if the parent(s)/guardian(s) cannot be reached immediately;

5. Name, address, and telephone numbers of the child's health care provider, dentist, and if applicable, their hospital of choice;

6. A health history, including any health care plans, which indicates communicable diseases and chronic illnesses or injuries the individual has had, any known drug reactions and allergies, medications being taken, any necessary health procedures or special diets, and immunization record;

7. A dated, written authorization for emergency medical care signed and updated annually by the parent(s)/guardian(s). The authorization must be notarized if required by the local hospital, clinic, or emergency health care facility;

8. Written authorization, obtained in advance of the event from a parent/guardian, for a child to participate in field trips or special activities, whether scheduled or unscheduled, whether walking or riding in an approved vehicle; and~~,~~

9. Written authorization from a parent/guardian for media release.

B. The center must maintain and update annually and upon changes, a record on each child that includes:

1. A written record of any serious accident, illness, or injury occurring during care must be retained in each child's record, with a copy provided to the parent(s)/guardian(s).

2. Observations of the child's development to document the child's progress and challenges to be discussed at parent conferences;

3. A record of parent conferences, including dates of conferences, and names of center staff and parent(s)/guardian(s) involved; and~~,~~

4. A copy of the child's health statement completed by a health care provider.

2.209~~7.702.35~~ STAFF RECORDS

A. A record must be maintained, either written or electronic, for each staff member that includes the following:

1. Name, address, telephone number, and birth date of the individual;

2. Verification of qualifications and training;

3. Immunization record or statement, and health history;

4. Dates of employment and employment history;

5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,

6. All information from background checks as required in the "General Rules for Child Care Facilities" ~~at~~ rule sections 2.116 and 2.117~~7.701.32~~.

2.210~~7.702.36~~ CONFIDENTIALITY AND RETENTION

A. The confidentiality of all staff and children's records must be maintained. See rule section 2.124~~7.701.6~~, of the "General Rules for Child Care Facilities."

B. Staff and children's records must be available, upon request, to authorized personnel of the Department.

C. If records for organizations having more than one (1) center are kept in a central file, duplicate identifying and emergency information for both staff and children must also be kept on file at the center attended by the child and where the staff member is assigned.

D. The records of children and staff must be maintained by the center for at least three (3) years after the last date of attendance or employment with the program.

E. The health and mental health consultation records must be maintained by the center for at least three (3) years from the date of consultation.

F. Records of enrollment, daily attendance for each child and daily records of the time the child arrives at and departs from the center for the past twelve (12) months must be on file at the center. The previous two (2) years must be on file at either the center or a central location or storage.

G. Posting of any personal information or photos of children on social media or advertisement without written parental consent is prohibited.

~~7.702.4 STAFF~~

2.211~~7.702.41~~ GENERAL REQUIREMENTS FOR ALL STAFF

A. All staff at the center must demonstrate knowledgeable decision-making, judgment, and concern for the proper care and well-being of children.

B. Staff must not consume or be under the influence of any substance that impairs their ability to care for children.

C. Illegal drugs and drug paraphernalia, must never be present on the premises of the center.

D. Staff must not use marijuana and marijuana infused products, tobacco products of any kind, or alcohol in the presence of children. To prevent exposure to secondhand smoke, child care centers must prohibit the use of tobacco and marijuana products on all center property, both indoors and outdoors. All marijuana and marijuana infused products, vaping and tobacco products, and alcohol must be kept inaccessible to children at all times.

E. When caring for children, staff must refrain from the personal use of electronics including, but not limited to, cell phones and portable electronic devices.

F. Staff members must be current for all immunizations routinely recommended for adults by their health care provider.

G. All staff members must submit to the center a medical statement, signed and dated by a physician or other health care provider, verifying that they are in good mental, physical, and emotional health appropriate for the position for which they have been hired. This statement must be dated no more than six (6) months prior to employment or within thirty (30) calendar days after the first date of employment. Subsequent self-reported health histories must be submitted annually.

H. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing.

I. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

J. Prior to working with children, each staff member must read and be instructed about all policies and procedures of the center. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

K. Within thirty (30) calendar days of employment at the center, each staff member must read and be instructed about all licensing rules governing child care centers. Staff members must sign a statement indicating that they have read and understand the licensing rules.

L. If volunteers are used by the center, there must be a clearly established policy regarding their function, orientation, and supervision. Also see ~~also~~ rule section 2.215~~7.702.44 A-E~~.

M. Within thirty (30) calendar days of the last day of employment, staff members must be provided a letter verifying their experience at the center. The letter must contain the center’s address, phone number, and license number; the employee’s start date and end date; and the total number of hours worked with children. Hours worked with infants and toddlers must be documented separately from hours worked with other age groups. The letter must be signed by a director, owner, or human resources agent of the center or governing body.

N. Prior to working with children, each staff member must read and be trained on the center’s policies and procedures for the administration of medications. Staff members must sign a statement indicating that they have read and have been trained on the center's administration of medications policies and procedures.

2.212~~7.702.42~~ TRAINING

A. All staff must complete a pre-service building and physical premises safety training prior to working with children. The training must include identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, vehicular traffic handling and storage of hazardous materials and the appropriate disposal of biological contaminants.

1. This training is developed and facilitated by the program for staff to identify program specific environmental hazards. Staff must be retrained if there are changes to the building and physical premises.

B. All staff must complete a Department-approved standard precautions training that meets current Occupational Safety and Health Administration (OSHA) requirements prior to working with children. This training must be renewed annually and will be counted towards ongoing professional development.

C. Staff working with infants less than twelve (12) months old must complete a Department-approved safe sleep training prior to working with infants less than twelve (12) months old. This training must be renewed annually and will be counted towards ongoing professional development.

D. Staff working with children less than three (3) years of age must complete a Department-approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed every two (2) years and will be counted towards ongoing professional development.

E. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member on duty who holds a current Department-approved first aid and safety certificate. ~~(~~including cardiopulmonary resuscitation (CPR) for all ages of children~~,)~~ and is responsible for administering First Aid and CPR to children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location.

F. Within thirty (30) calendar days of employment, all employees caring for children, not required by rule to be certified in First Aid and CPR, must complete the Department-approved Introduction to First Aid and CPR module. The module must be renewed every two (2) years.

G. Within thirty (30) calendar days of employment, all employees and regular volunteers must be trained using a Department-approved training about child abuse prevention, which includes common symptoms and signs of child abuse, how to report, where to report, and when to report suspected or known child abuse or neglect. This training must be renewed annually.

H. Within ninety (90) calendar days of employment, all staff required to register with the Colorado Shines Professional Development Information System (listed in rule section 2.207(D)~~7.702.33, d~~) must complete the Department-approved training course: Introduction to the Early Intervention and Preschool Special Education Programs. This course is required once and will be counted towards ongoing professional development.

I. Within ninety (90) calendar days of employment, all staff required to register with the Colorado Shines Professional Development Information System (listed in rule section 2.207(D)~~7.702.33, d~~) must complete the Department-approved Recognizing the Impact of Bias on Early Childhood Professionals training or other Department-approved training on implicit bias. This course is required once and will be counted towards ongoing professional development.

J. Within ninety (90) calendar days of employment, all directors and assistant directors must complete the Department-approved training: Working with an Early Childhood Mental Health

Consultant. This course is required once and will be counted towards ongoing professional development.

K. Within ninety (90) calendar days of employment, all directors and assistant directors must complete the Department-approved training: Introduction to Child Care Health Consultation. This course is required once and will be counted towards ongoing professional development.

L. All staff must have at least one (1) hour of child development training within ninety (90) days of employment. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This training is required once and will count toward ongoing training requirements if taken after the date of hire.

M~~L~~. All staff who work with children must complete a minimum of fifteen (15) clock hours of ongoing professional development each year, beginning with the start date of the employee. At least three (3) clock hours per year must be in the focus of social-emotional development.

1. Ongoing professional development courses must demonstrate a direct connection to one (1) or more of the following competency areas:

   a. Child growth and development, and learning

   b. Child observation and assessment;

   c. Family and community partnerships;

   d. Social-emotional health and development promotion;

   e. Health, safety and nutrition;

   f. Professional practice; or

   g. Teaching practices.

2. Each one (1) semester credit hour course with a direct connection to the competency area listed in rule section 2.212(M)~~7.702.42, L, 1, a-h~~, taken at an accredited college or university shall count as fifteen (15) clock hours of ongoing professional development.

3. Training hours completed can only be counted during the year taken and cannot be carried over.

4. To be counted for ongoing professional development, the training certificate must have documentation that includes:

   a. The title of the training;

   b. The competency domain or from a nationally approved vendor list;

   c. The date and clock hours of the training;

   d. The name or signature of the trainer, or other approved method of verifying the identity of trainer or entity;

   e. Expiration of training, if applicable; and~~,~~

   f. Connection to social emotional focus, if applicable.

5. The trainer must have documentation of the qualifications for each topic of training conducted, which must be available for review by the Department.

N~~M~~. Within thirty (30) calendar days of employment and annually, all staff responsible for the collection, review, and maintenance of the child immunizations records must complete the Colorado Department of Public Health and Environment immunization course.

2.213~~7.702.43~~ DIRECTOR QUALIFICATIONS - LARGE CHILD CARE CENTER

A. Large center directors must have a current director qualifications letter issued by the Department or a current early childhood professional credential level III or higher in version 3.0 as determined by the Department prior to working as the director of a large center.

B. The educational requirements for the director of a large center must be met by satisfactory completion of one (1) of the following. (All course hours are given in semester credit hours, but equivalent quarter credit hours are acceptable.) Official college transcripts must be submitted to the Department for evaluation of qualifications.

1. A Bachelor's, Master's, or Doctorate degree from an accredited college or university in one (1) of the following:

   a. Child Development;

   b. Child Psychology;

   c. Early Childhood Education;

   d. Early Childhood Special Education;

   e. Educational Leadership and Administration;

   f. Elementary Education;

   g. Family and Human Development;

   h. Family Studies; ~~or,~~

   i. Special Education; or~~,~~

2. Completion of all of the following three (3) semester credit hour courses from an accredited college or university in each of the following subject or content areas:

   a. Introduction to Early Childhood Professions;

   b. Introduction to Early Childhood Techniques;

   c. Guidance Strategies for Young Children or has been issued the Colorado Pyramid Model Training certificate of completion;

   d. Health, Nutrition, and Safety;

   e. Administration of Early Childhood Care and Education Programs;

   f. Administration: Human Relations for Early Childhood Professions or Introduction to Business;

g. Curriculum Development: Methods and Techniques;

h. Child Growth and Development;

i. The Exceptional Child; and~~,~~

j. Infant/Toddler Theory and Practice or have been issued the Expanding Quality Infant/Toddler Training certificate of completion; or~~,~~

3. Completion of a course of training approved by the Department that includes course content listed at rule section 2.213(B)(1)~~7.702.43, B, 1;~~, and experience listed at rule section 2.213(C)~~7.702.43, C~~.

C. The experience requirements for the director of a large center must include direct work with young children ~~and families~~ within an early care and education setting and is based on the completion of the following amount of verified work experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual:

1. Persons with a Bachelor's, Master's, or Doctorate degree with a major emphasis as listed in rule section 2.213(B)(1)~~7.702.43, B, 1~~, or individuals with an early childhood professional credential level III version 3.0 as determined by the Department; no additional experience is required.

2. Persons with an Associate's degree in early childhood education or child development must have three (3) months (455 hours) of verified experience.

3. Persons with a Bachelor's degree and have completed the thirty (30) semester credit hours specified in rule section 2.213(B)(2)~~7.702.43, B, 2~~, must have three (3) months (455 hours) of verified experience.

4. Persons who have no degree but have completed the thirty (30) semester credit hours specified in rule section 2.213(B)(2)~~7.702.43, B, 2~~, must have six (6) months (910 hours) of verified experience.

5. Additional requirements for verified experience include:

a. Verified experience acquired in a school-age child care center may count for up to half of the required experience for director qualifications. The other half of the required experience must be working directly with children in a child development program; and,

b. For family child care home experience to be considered, the applicant must be, or have been, the licensee in the state of Colorado.

D. Renewal of Large Center Director Qualifications Letter

1. All individuals who were previously qualified as a large center director by the Department, who have not completed the required courses in each of the following subject or content areas, must take one (1) course every two (2) years from an accredited college or university, with all courses completed by February 1, 2022, or be in compliance with a current transitory director qualification letter. Official transcripts listing completion of one (1) or more of the five (5) courses shall be submitted to the Department within thirty (30) calendar days of completing each course until all five (5) courses have been completed in:

a. Guidance Strategies for Young Children or has been issued a Colorado Pyramid Model Training certificate of completion;

b. Health, Nutrition and Safety or Child Nutrition;

c. The Exceptional Child;

d. Infant/Toddler Theory and Practice or have been issued the Expanding Quality in Infant and Toddler Care Training certificate of completion; and~~,~~

e. Administration: Human Relations for Early Childhood Professions or Introduction to Business.

2. Except for individuals holding an early childhood professional credential level III version 3.0 as determined by the Department, directors meeting all large center director requirements in rule section 2.213(B)~~7.702.43, B~~, in centers operating more than six (6) hours a day must complete a three (3) semester credit hour course from an accredited college or university every five (5) years in a subject related to the operation of a center and must be able to demonstrate the relationship of the course taken to the operation of the center.

3. The renewal application and the official transcripts must be submitted to the Department. The renewed director letter shall expire five (5) years from approval of the renewal application.

4. Director letters must be renewed prior to the expiration date or the letter becomes invalid and the individual no longer qualifies as a director of a large center.

E. Revocation of Large Center Director Letter

1. Persons may be denied an original or renewal of a director letter; a director letter may be revoked if substantial evidence has been found that the applicant or director is responsible for one or more of the following at any child care facility, including, but not limited to:

a. Committing fraud;

b. Responsible for egregious or repetitive grounds for negative licensing actions;

c. Providing false information;

d. Providing false transcripts for self or staff; or~~,~~

e. Providing false letters of experience for self or staff.

2. Persons who have had a director Letter revoked or denied for the reasons listed in rule section 2.213(E)(1)~~7.702.43, E, 1, a-e~~, may submit a new application for consideration after a period of two (2) years from the date of denial or revocation.

3. A person issued a new director letter after a denial or revocation shall receive a provisional letter for no less than nine (9) months. After the provisional period has been completed, a new application may be submitted for consideration of a five (5) year time limited letter.

4. Persons whose director letter has been denied or revoked for the reasons listed in rule section 2.213(E)(1)~~7.702.43, E, 1, a-e~~, may file an appeal in the same manner as a request for waiver, as specified in rule section 2.114~~7.701.13~~ of the "General Rules for Child Care Facilities.~~,~~"

F. Assistant Director Requirements

1. An assistant director working under the supervision of a director must be at least eighteen (18) years of age, have at least nine (9) months (1,365 hours) of experience as an early childhood teacher, and must meet one (1) of the following qualifications:

a. A Bachelor's, Master's, or Doctorate degree from an accredited college or university; or,

b. Completion of at least half of the required coursework for director qualifications in rule section 2.213(B)(2)~~7.702.43, B, 3~~, including the following two (2) administration courses:

(1) Administration of Early Childhood Care and Education Programs; and~~,~~

(2) Administration: Human Relations for Early Childhood Professions, or Introduction to Business.

G. All course grades used for the large center director or assistant director requirements must be a "C" or better.

2.214~~7.702.44~~ DIRECTOR QUALIFICATIONS - SMALL CHILD CARE CENTER

A. The director or substitute director of a small center must either: meet large center director qualifications or meet at least one (1) of the following qualifications:

1. Possess a current ~~professional~~ teaching license issued by the Colorado Department of Education with an endorsement in the area of elementary education, early childhood education, early childhood special education,~~ or~~ early childhood special education specialist; or principal licensure;~~ or,~~

2. Possess a current early childhood professional credential level II or higher in version 3.0 as determined by the Department;~~ or,~~

3. Current certification as a child development associate (CDA) credential in: center-based, preschool; center-based, infant-toddler; or family child care; or other Department-approved credential;~~ or,~~

4. Two (2) years and nine (9) months (5,005 hours) of satisfactory experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual, and at least two (2) three (3)-semester credit hour courses from an accredited college or university in early childhood education, and one (1) of the courses must be either:

a. Introduction to Early Childhood; or~~,~~

b. Early Childhood Guidance Strategies for Children or has been issued Colorado Pyramid Model Training certificate of completion; or~~,~~

5. Nine (9) months (1,365 hours) of satisfactory experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual, and an Associate's degree from an accredited college or university, with at least two (2) three (3)-semester credit hour courses in early childhood education, and one (1) of the courses must be either:

   a. Introduction to Early Childhood Professions; or~~,~~

   b. Early Childhood Guidance Strategies for children or has been issued a Colorado Pyramid Model Training certificate of completion.~~; or,~~

6. Three (3) months (455 hours) of satisfactory experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual; and an Associate's degree in child development or early childhood education from an accredited college or university, with at least two (2) three (3)-semester credit hour courses in either:

   a. Introduction to Early Childhood Professions or possesses a Child Development Associate (CDA) credential in: Center-Based, Preschool; Center-Based, Infant-Toddler; or Family Child Care; or~~,~~

   b. Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion.

B. Satisfactory experience includes all options listed at rule section 2.213(C)~~7.702.43, B and C~~.

C. All course grades used for the small child care center director requirements must be a "C" or better.

D. Substitute Director Requirements

1. In the absence of the director of a small center, an individual who meets director qualifications for a small center or a large center must substitute for the director.

2.215~~7.702.45~~ QUALIFICATIONS FOR TEACHERS, SUBSTITUTES, STAFF AIDES, AND VOLUNTEERS

A. Early Childhood Teacher

1. An early childhood teacher, assigned responsibility for a single group of children and working under the supervision of a director, must be at least eighteen (18) years of age and meet at least one (1) of the following qualifications:

   a. A Bachelor's, Master's, or Doctorate degree from an accredited college or university with a major area of study in one (1) of the following areas:

      (1) Child Development;

      (2) Child Psychology;

      (3) Early Childhood Education;

      (4) Early Childhood Special Education;

      (5) Educational Leadership and Administration;

(6) Elementary Education;

(7) Family and Human Development;

(8) Family Studies; or~~,~~

(9) Special Education;~~ or,~~

b. A Bachelor's, Master's, or Doctorate degree from an accredited college or university with a major area of study in any area other than those listed at rule section 2.215(A)(1)(a)~~7.702.45, A, 1~~, a, and an additional two (2) three (3)-semester credit hour courses in early child education, with one (1) course as the following:

(1) Introduction to Early Childhood Professions; or~~,~~

(2) Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion;~~ or,~~

c. An Associate's degree (60 semester credit hours) from an accredited college or university in early childhood education or child development, which must include at least two (2), three (3)-semester credit hour courses in either:

(1) Introduction to Early Childhood Professions; or~~,~~

(2) Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion;~~ or,~~

d. A current professional teaching license issued by the Colorado Department of Education with an endorsement in the area of elementary education, early childhood education, early childhood special education, or early childhood special education specialist;~~ or,~~

e. A current early childhood professional credential level II or higher in version 3.0 as determined by the Department;~~ or,~~

f. A current certification as a child development associate (CDA) in: center-based, preschool; center-based, infant-toddler; or family child care; or other Department-approved credential;~~ or,~~

g. Completion of a course of training approved by the Department and published on the Department's approval list; and nine (9) months (1,365 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual;~~ or,~~

h. Three (3) months (455 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual; and the completion of eighteen (18) semester credit hours from an accredited college or university in early childhood education, with one (1) course as:

(1) Introduction to Early Childhood Professions; or~~,~~

(2) Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion;~~ or,~~

i. Twenty-one (21) months (3,185 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual. Satisfactory experience includes being a licensee of a Colorado family child care home, a teacher's aide or teacher in a child care center, preschool, or elementary school. In addition, the individual must either:

(1) Possess a current early childhood professional credential level I or higher in version 3.0 as determined by the Department; or,

(2) Complete two (2) three (3) semester credit hour courses from an accredited college or university in early childhood education with one (1) course as either:

(a) Introduction to early childhood professions or has been issued the Child Development Associate (CDA) credential; or~~,~~

(b) Early childhood guidance strategies for children or has been issued a Colorado Pyramid Model training certificate of completion.

2. All course grades used for the early childhood teacher requirements must be a "C" or better.

B. Infant Program Staff

1. Staff Requirements

a. The infant program must have an infant program supervisor who meets at least one (1) of the following qualifications:

(1) A Registered Nurse, with an active license~~d to practice in Colorado~~ from the State Board of Nursing, with a minimum of three (3) months (455 hours) of verifiable experience in the care and supervision of infants who are not related to the individual; ~~or,~~

(2) A Licensed Practical Nurse, with an active license~~d to practice in Colorado~~from the State Board of Nursing, a minimum of nine (9) months (1,365 hours) of verifiable experience in the care and supervision of infants who are not related to the individual; ~~or,~~

(3) An adult who holds a certificate in infant and toddler care from an accredited college or university with completion of a minimum of thirty (30) semester credit hours in the development and care of infants and toddlers in a group setting; ~~or,~~

(4) An adult who is currently certified as a child development associate (CDA) in: center-based, preschool; center-based, infant-toddler; or family child care; and has completed the infant/toddler theory and practice or has been issued the expanding quality in infant and toddler care training certificate of completion; ~~or,~~

(5) An adult who holds a current early childhood professional credential level II or higher in version 3.0, as determined by the Department, has a minimum of nine (9) months (1,365 hours) of verifiable experience in the care and supervision of infants and/or toddlers, and:

(a) Has completed one (1) three (3) semester credit hour course in infant/toddler development; or~~,~~

(b) Has completed the Department-approved expanding quality in infant and toddler care training course.

(6) An adult who:

(a) Is at least nineteen (19) years of age;

(b) Is qualified as an early childhood teacher (rule section 2.215(A)~~7.702.45, A~~);

(c) Has a minimum of nine (9) months (1,365 hours) of verifiable experience in the group care of infants or toddlers; and~~,~~

(d) Has completed at least two (2) three (3)-semester credit hour courses from an accredited college or university on the development and care of infants and toddlers in a group setting, one (1) of which must be:

(i) Infant/Toddler Development; or~~,~~

(ii) The Department-approved expanding quality in infant and toddler care training course.~~; or,~~

(7) An adult who:

(a) Is at least nineteen (19) years of age;

(b) Is qualified as an early childhood teacher (rule section 2.215(A)~~7.702.45, A~~);

(c) Has a minimum of one (1) year and nine (9) months (3,185 hours) of verifiable experience in the group care and supervision of infants or toddlers; and~~,~~

(d) Will complete, within the first six (6) months of employment, two (2) three (3)-semester credit hour courses from an accredited college or university, one (1) of which must be:

(i) Infant/Toddler development; or~~,~~

(ii) The Department-approved expanding quality in infant and toddler care training course.

b. An infant program early childhood teacher must meet the following requirements:

(1) Meet the qualifications for an early childhood teacher found at rule section 2.215(A)~~7.702.45, A~~, or be qualified as an infant program supervisor; and~~,~~

(2) Has a minimum three (3) months (455 hours) of verifiable experience in the care and supervision of children under three (3) years of age.

c. Prior to being assigned a group of children, the infant program early childhood teacher must complete eight (8) hours of orientation in the infant program under the supervision of the infant program supervisor. The orientation may include, but not limited to, the following topics:

(1) Toys and equipment, appropriate activities for infants and toddlers, appropriate sleep positions for infants and toddlers, and the safe and appropriate diaper change technique.

d. The infant program staff aide must be at least eighteen (18) years of age, must have completed eight (8) hours of orientation as listed above at the infant program, and must work under the direct supervision of an infant early childhood teacher.

e. There must be at least one (1) staff member on duty in each infant room at all times who holds a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

2. Required Staff and Supervision

(See chart in rule section 2.216(A)~~7.702.46~~)

a. In the infant program, there must be a qualified infant program supervisor present sixty percent (60%) of the hours of operation of the infant program who is responsible for the care of the infants. An individual qualified as an infant early childhood teacher must be responsible during the remaining time.

b. The infant program supervisor or an infant early childhood teacher must be assigned to each group of ten (10) or fewer infants in attendance. An infant program staff aide may be assigned to assist the infant program supervisor or the infant early childhood teacher when six (6) through ten (10) infants are in care in the group to maintain the staff ratio of one (1) adult for each five (5) infants.

c. There must be assigned at least one (1) infant program supervisor in the infant program for each twenty (20) or fewer infants in attendance.

C. Toddler Program Staff

1. Staff Requirements

a. The toddler early childhood teacher, a staff member assigned responsibility for a single group and working under the supervision of the director, must meet at least one (1) of the following qualifications:

1~~a~~. A Registered Nurse, licensed to practice in Colorado, with a minimum of three (3) months (455 hours) of verifiable experience in the care and supervision of children less than three (3) years of age who are not related to the individual; ~~or,~~

2~~b~~. A Licensed Practical Nurse, licensed to practice in Colorado, with at least nine (9) months (1,365 hours) of verifiable experience in the care and supervision of children less than three (3) years of age who are not related to the individual; ~~or,~~

3~~c~~. An adult who holds a certificate in infant and toddler care from an accredited college or university with completion of at least thirty (30) semester credit hours

or equivalent in such courses as child growth and development, nutrition, and care practices with children birth to three (3) years of age; ~~or,~~

4~~d~~. An adult who is certified as a child development associate (CDA) in: center-based, preschool; center-based, infant-toddler; or family child care; or is certified as a child care professional (CCP); or holds another Department-approved certificate; ~~or,~~

5~~e~~. An adult who meets the education and experience requirements for an early childhood teacher of a large center (rule section 2.215(A)~~7.702.45, A~~); or~~,~~

6~~f~~. A current early childhood professional credential level II or higher in version 3.0 as determined by the Department.

2. Staff aides must be at least sixteen (16) years of age, must work directly under the supervision of the director or a toddler early childhood teacher, and must have completed eight (8) hours of orientation at the toddler program.

3. For every fifteen (15) or fewer toddlers, there must be at least one (1) staff member in the toddler program at all times who has a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

D. Kindergarten Teacher

A kindergarten teacher, assigned responsibility for a single group of children during times specified in rule section 2.216~~7.702.46~~, must meet one (1) of the following qualifications:

1. Each teacher of a kindergarten class must have the same qualifications as a director for a large center (see rule section 2.213~~7.702.43~~); or must possess a current professional teaching license issued by the Colorado Department of Education in elementary education; or~~,~~

2. A current early childhood professional credential level III or higher in version 3.0 as determined by the Department.

E. Assistant Early Childhood Teacher

An assistant early childhood teacher, assigned responsibility for a single group of children during times specified in rule section 2.216~~7.702.46~~, must meet one (1) of the following qualifications:

1. Completion of one (1) of the early childhood education courses in rule section 2.213(B)(2)~~7.702.43 B, 3~~, with a course grade of “C” or better; and a minimum of nine (9) months (1,365 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual. Assistant early childhood teachers must be enrolled in and attending the second (2nd) early childhood education course, which will be used as the basis for their qualification for the position of early childhood teacher; or~~,~~

2. Completion of two (2) of the early childhood education courses referenced in rule section 2.215(A)(1)(b)~~7.702.43, B, 3~~, with a course grade of “C” or better and no experience; or,

3. A current early childhood professional credential level I or higher in version 3.0 as determined by the Department.

F. Substitute Staff

1. Equally qualified staff must be available to substitute for regularly assigned staff who are sick, on vacation, or otherwise unable to be on duty.

2. For short term unscheduled early childhood teacher vacancies up to ten (10) business days per calendar year, an assistant early childhood teacher can substitute for the early childhood teacher. The date and times of substitution must be recorded and available for review at all times.

G. Staff Aide

1. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the director or an early childhood teacher.

2. Infant staff aides must be at least eighteen (18) years of age.

3. Staff aides, without supervision from an early childhood teacher or director, may supervise no more than two (2) preschool age children while assisting the children with diapering or toileting.

H. Volunteers

1. Volunteers who are used to meet staff to child ratio must be equally qualified as an early childhood teacher, assistant early childhood teacher, or staff aide. Equally qualified volunteers must have complete staff records as required in rule section 2.209~~7.702.35~~ and complete training requirements as required in rule section 2.212~~7.702.42~~.

2. Volunteers who are not required to be equally qualified or successfully complete background checks must be supervised and given instruction as to the center's policies and procedures.

3. Volunteers between the ages of twelve (12) and sixteen (16) must have a written purpose developed by the center for volunteering and may not volunteer for more than two (2) hours per day.

2.216~~7.702.46~~ REQUIRED STAFF AND SUPERVISION

A. Staff-Child Ratios

1. For the purposes of this rule subsection (A), in determining staff-child ratios, only staff members and/or volunteers qualified under rule section 2.215(A)~~7.702.45~~, who work directly with children are counted.

2. For full day programs, during times of low attendance and/or during the first and last hour of the day, when only eight (8) or fewer children are present in the facility, there must be at least one (1) early childhood teacher or assistant early childhood teacher working with the children and a second staff member must be on site and immediately available. There must be no more than two (2) children less than the age of two (2) present. When nine (9) or more children are in attendance, at least two (2) staff members must be on duty.

3. The director of the center must be present at the center at least sixty percent (60%) of any day that the center is open.

a. Centers licensed under the same governing body that provide care for preschool-age children only at multiple locations are not required to have a large center director qualified staff member assigned to each program. to qualify, centers

must have an organizational structure that includes employees of the center that provide at least ten (10) administrative support elements from the following:

1. Colorado Preschool Program Coordinator;
2. Parent Educational Specialist;
3. Principal or Executive Director;
4. Health Coordinator;
5. Nurse;
6. Health Technician;
7. Food Service Director;
8. A Registered Dietitian or an individual with a Master's level or higher education in Nutrition;
9. Fire/Health/Safety Inspector;
10. Mental Health Team;
11. Speech Language Pathologist;
12. Occupational/Physical Therapist;
13. School Psychologist;
14. Family Outreach Worker;
15. Human Resource Specialist; or~~,~~
16. Transportation Manager.

b. The program must obtain a director who meets large center director qualifications if substantial evidence has been found leading to an adverse licensing action for any of the following:

1. Lack of supervision;
2. Operating out of the approved staff member to child ratio; or
3. Operating without sufficient qualified staff.

4. If the director of a large center cannot be present sixty percent (60%) of any day, an assistant director must be on site acting in the capacity of the director.

5. When there is a director vacancy or absence, an assistant director may substitute for the director for a maximum of up to twelve (12) weeks per calendar year. The assistant director must be on site at least sixty percent (60%) of any day the center is open. For vacancies exceeding twelve (12) weeks, an individual meeting director qualification must be on site acting as director until a new director is appointed. The dates must be documented and kept on file for review.

6. An assistant director must consult with a qualified director on administering the center in accordance with early childhood principles and practices and licensing rules.

7. There must be assigned at least one (1) qualified early childhood teacher supervising each group of children unless otherwise specified in rules. A director may be the assigned teacher for one (1) group of children.

8. Full day programs may have assistant early childhood teachers supervise preschool-age and older children during the following periods of operation:

   a. Opening hours: an assistant early childhood teacher may be alone with children for the first two (2) hours of a center's daily operating hours;

   b. Nap time: an assistant early childhood teacher may be alone with children for up to one (1) hour during nap time;

   c. Closing hours: an assistant early childhood teacher may be alone with children for up to the two (2) hours prior to the closing time of a center's daily operations;

   d. Taking children to the restroom or diapering; and~~,~~

   e. When substituting for an early childhood teacher in compliance with rule section 2.215(F)(2)~~7.702.45, F, 2~~.

9. At least one (1) staff member with the current Department-approved medication administration training and delegation must be on duty at all times.

10. At nap time, the child to staff ratio may be doubled for children two and one half (2 ½) years of age and older in preschool classrooms when the following conditions have been met:

    a. At least half of the children are sleeping;

    b. Another staff member is onsite in the center and immediately available;

    c. Maximum group size and room capacity are not exceeded; and~~,~~

    d. Staff member supervising children is qualified as an early childhood teacher or assistant early childhood teacher.

11. Formal kindergarten class sessions must have one (1) staff member for each twenty-five (25) or fewer children in attendance. At other parts of the day when children are in attendance, the ratio must be one (1) staff member to each fifteen (15) or fewer children.

12. Children of the director or of staff members who attend the center and other children on the premises for supervision and care must be counted against the licensed capacity in the appropriate age groups.

13. In determining staff-child ratios, children who are in attendance for only part of the day are counted only while at the center.

14. Staff-Child Ratios

AGES OF CHILDREN	NUMBER OF STAFF

6 weeks to 18 months (infants)	1 staff member to 5 infants
12 months to 36 months	1 staff member to 5 toddlers
24 months to 36 months	1 staff member to 7 toddlers
2-1/2 years to 3 years	1 staff member to 8 children
3 years to 4 years	1 staff member to 10 children
4 years to 5 years	1 staff member to 12 children
5 years and older	1 staff member to 15 children
Mixed age group 2-1/2 years to 6 years	1 staff member to 10 children

a. In other preschool age combinations, the staff ratio for the youngest child must be utilized if more than twenty percent (20%) of the group is composed of younger children. This does not apply to infants and toddlers. The ratio for toddler groups is based on the youngest child in the group.

15. Maximum Group Size for Children

AGES OF CHILDREN	**MAXIMUM GROUP SIZE**
6 weeks to 18 months	10 infants
12 months to 36 months	10 toddlers
24 months to 36 months	14 toddlers
2-1/2 years to 3 years	16 children
3 years to 4 years	20 children
4 years to 5 years	24 children
5 years and older	30 children
Mixed age group 2-1/2 to 6 years of age	20 children

a. In other preschool age combinations, the maximum group size for the youngest child must be utilized if more than twenty percent (20%) of the group is composed of younger children. This does not apply to infants and toddlers. The group size for toddler groups is based on the youngest child in the group.

b. Preschool age and school-age groups of children must be separated into developmentally appropriate activities. Groups are not required to be separated from each other by permanent or portable dividers or walls.

c. Group size for children in preschool and school-age classrooms may be exceeded for circle time, meal and snack time, special occasions, and activities.

d. The licensed room capacity must not be exceeded at any time.

e. Toddler-age groups of children must be separated from each other by permanent or portable dividers or other methods as approved by the Department.

f. When combining age groups, not including individual child transitions, children must be cared for in the room licensed for the youngest child in care, including the outdoor play area.

16. Emergency Situations

A. In the case of an emergency situation, including but not limited to illness, death, accident, law enforcement action, road closure, hazardous weather, emergency bodily function, child elopement, or providing emergency attention or care to a child, the child care center may operate under the following guidelines:

(1) The facility may temporarily use a staff member, who has successfully completed criminal background check requirements, to supervise children for no more than two (2) hours until a qualified staff member is secured. The dates and times must be recorded and made available for review at all times.

(2) A large child care center or a child care center that operates on the property of a school district, district charter school, or institute charter school, may permit a staff member, who has successfully completed criminal background check requirements but is not a qualified caregiver, to supervise children for an amount of time that is reasonably necessary to address an emergency circumstance.

(3) During any emergency situation, the facility must be in compliance with the staff-to-child ratio.

B. Service/Housekeeping Personnel

1. Service personnel must be available for housekeeping and food preparation as needed for adequate operation and maintenance of the center.

2. Assignment of housekeeping and maintenance duties to child care staff must not interfere with their supervisory responsibilities and child care duties.

C. Child Care Health Consultant

1. Center staff must have a monthly consultation with a current Department-approved child care health consultant who must meet one (1) of the following qualifications:

a. A licensed registered nurse with knowledge and experience in maternal and child health;

b. A pediatric nurse practitioner;

c. A family nurse practitioner; or~~,~~

d. A physician with knowledge and experience in pediatrics or maternal and child health.

2. The monthly consultation must be specific to the needs of the facility and include some of the following topics: training, delegation and supervision of medication administration and special health procedures, health care plans, hygiene, disease prevention, equipment safety, nutrition, interaction between children and adult caregivers, and child growth and development.

3. The monthly consultation must be conducted on-site at least quarterly or more frequently as required by the child care health consultant. Teleconsultations are allowed for the remaining months.

4. The date and content of each consultation must be recorded and maintained in the center's files for three (3) years.

5. For the Department-approved child care health consultant, the center must maintain documentation from the Colorado Medical Board or State Board of Nursing~~Colorado~~

~~Department of Regulatory Agencies~~ that the physician's or registered nurse's ~~or the medical doctor's~~ licensure is active and in good standing.

6. For the Department-approved child care health consultant, the center must maintain documentation of a brief biography highlighting applicable knowledge, experience, and approximate dates worked as a school nurse or child care health consultant.

7. All Department-approved child care health consultants must complete the Department-approved child care health consultant introductory training course within six (6) months of hire. Child care health consultants must complete Department-approved ongoing professional development training every three (3) years. The center must obtain and maintain proof of training completion.

8. All Department-approved child care health consultants must complete the Department-approved Colorado Department of Public Health and Environment immunization course annually. The center must obtain and maintain proof of course completion.

9. All Department-approved child care health consultants must complete the Department-approved training about child abuse prevention, which includes common symptoms and signs of child abuse or neglect. This training must be completed within thirty (30) days of hire and renewed every three (3) years.

~~7.702.5~~ ADMISSION PROCEDURE

2.217 ADMISSION

A. The center must accept and care only for children of the ages for which it has been licensed. At no time shall the number of children in attendance exceed the number for which the center has been licensed.

B. Admission procedures must be completed prior to the child's attendance at the center and must include:

1. A pre-admission interview with the child's parent(s)/guardian(s) to determine whether the services offered by the center will meet the needs of the child and the parent(s)/ guardian(s);

2. Completion of the registration information required for inclusion in the child's record as required in rule section 2.208~~7.702.34~~; and~~,~~

3. If applicable, a Department-approved health care plan authorized by the child's health care provider and parent(s)/guardian(s) defining the interventions needed to care for a child who has an identified health or developmental condition or concern including, but not limited to seizures, asthma, diabetes, severe allergies, heart or respiratory conditions, and physical disabilities. Any applicable medications, supplies, and/or medical equipment must be available to the staff prior to the child's first day of care. The staff working with a child with a health care plan must be informed, trained, and delegated responsibility for carrying out the health care plan by the Department-approved child care health consultant; supervision of the plan and interventions must be documented.

C. Children with Special Needs

1. The admission of children who have special health care needs, disabilities, or developmental delays which includes children with social emotional and behavioral needs must be in alignment with the training and ability of staff and in compliance with the

Americans with Disabilities Act. Services offered must show that a reasonable effort is made to accommodate the child's needs and to integrate the child with other children. (See rule section 2.115~~7.701.14~~ of the General Rules Regulating~~for~~ Child Care Facilities)

2. The center must inform its Department-approved child care health consultant prior to the first day of care of the enrollment of a child with special health care needs, if known, so staff receive training, delegation and supervision by the Department-approved child care health consultant as indicated by the child's individualized health care plan.

3. For a child with special health care needs requiring intervention and/or medication, the center must obtain written instructions for providing services from the child's parent(s)/guardian(s), and the health care provider. If an existing individualized health care plan is provided for the child, it must be reviewed and followed by the center staff when caring for the child. If the child does not have an existing individualized health care plan, the individualized health care plan must be obtained by the child's first day of care.

4. For an enrolled child with a newly identified special health care need, the center must obtain written instructions for providing services from the child's parent(s)/guardian(s) and the health care provider. If the child with special health care needs does not have an existing individualized health care plan, the individualized health care plan and all associated medication(s) and/or equipment must be provided within thirty (30) calendar days of the child's identified need.

5. The individual health care plan must be updated at least every twelve (12) months from the date of the initial plan and as changes occur. The plan must include all information needed to care for the child, must be signed by the health care provider, parent(s)/guardian(s) and must include, but not be limited to, the following:

   a. Medication and dosing schedule;

   b. Nutrition and feeding instructions;

   c. Medical equipment or adaptive devices, including instructions;

   d. Medical emergency instructions;

   e. Toileting and personal hygiene instructions;

   f. Behavioral interventions; and~~,~~

   g. Medical procedure/intervention orders.

D. If the parent(s)/guardian(s) agree(s) that the center should care for a child in the infant program who is eighteen (18) months or older, the center must have on file a written statement from a health care provider confirming that care for the child is appropriate in the infant program.

E. If the parent(s)/guardian(s) agree(s) that the center should care for a child in the toddler program who is twelve (12) months old but not walking independently, or is over thirty-six (36) months old, the center must have on file a written statement from a health care provider confirming that care for the child is appropriate in the toddler program.

~~7.702.51~~ HEALTH CARE

2.218~~A.~~ STATEMENTS OF HEALTH STATUS

A~~1~~. The center has the right to refuse to admit a child if a statement from a health care provider or documentation of immunization status, or exemption, is not submitted.

B~~2~~. At the time of admission, the parent(s)/guardian(s) must provide for each child entering the center:

1~~a~~. Documentation of school-required immunization status or certificate of medical or nonmedical exemption, is required by the Colorado Board of Health. Up-to-date school-required immunizations must be documented as specified on the Colorado Department of Public Health and Environment certificate of immunization or on an "approved alternate" certificate of immunization. Colorado law requires proof of immunization status or exemption be provided prior to or on the first day of admission.

a. If the parent or legal guardian of a child wishes a nonmedical exemption from the requirement for immunizations due to a religious belief whose teachings are opposed to immunizations or a personal belief that is opposed to immunizations, the child's parent, or legal guardian must:

i. Submit the certificate of nonmedical exemption with a signature from an immunizing provider in Colorado; or

ii. Submit the certificate of nonmedical exemption received upon the completion of Colorado Department of Public Health and Environment online immunization education module.

2~~b~~. Within thirty (30) calendar days of admission, and within thirty (30) calendar days following the expiration date of a previous health statement, the parent(s)/guardian(s) of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care provider. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children less than two and one-half (2½) years of age. The statement must include when the next visit is required by the health care provider. All health statements must be kept at the center.

3~~c~~. Statements of health status of children less than two (2) years of age must be updated in accordance with the American Academy of Pediatrics recommended schedule for routine health supervision or as required in writing by the health care provider.

4~~d~~. Health statements for children over two (2) years of age to seven (7) years of age must be updated in accordance with the American Academy of Pediatrics recommended schedule for routine well child exams.

5~~e~~. For children seven (7) years of age and older or who have completed the first (1st) grade, subsequent statements of health status must be obtained every three (3) years.

2.219~~B.~~ MEDICATION

A~~1~~. Any unexpired routine medication, prescription or non-prescription (over the counter), must be administered only with a current written order of a health care provider with prescriptive authority and with written parental consent. Home remedies, homeopathic medication, vitamins, and supplements must not be administered to children in child care.

B~~2~~. The written order by the person with prescriptive authority shall include:

1~~a~~. Child's name;

2~~b~~. Licensed prescribing practitioner name, telephone number, and signature;

3~~c~~. Date authorized;

4~~d~~. Name of medication and dosage;

5~~e~~. Time of day medication is to be given;

6~~f~~. Route of medication;

7~~g~~. Length of time the medication is to be given;

8~~h~~. Reason for medication (unless this information needs to remain confidential);

9~~i~~. Side effects or reactions to watch for; and~~,~~

10~~j~~. Special instructions.

C~~3~~. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label.

D~~4~~. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

E~~5~~. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an at least annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label.

F~~6~~. Staff designated by the director to give medications must complete the Department-approved medication administration training and have current annual delegation or more often as determined by the Department-approved child care health consultant. Delegation must be from the center's current Department-approved child care health consultant who must observe and document the competency of each staff member involved in medication administration. All staff administering medication must have current cardiopulmonary resuscitation (CPR) and first aid training prior to administering medication with the following exceptions:

1~~a~~. Staff determined by the director, in consultation with the Department-approved child care health consultant, to be responsible for providing emergency medications must complete the Department-approved medication administration training: severe allergy or asthma. After completing the training, staff must receive delegation from their Department-approved child care health consultant for those medications only. Staff must then provide those medications to children based on the instructions from the child's individualized health care plan.

2~~b~~. Staff determined by the director, in consultation with the Department-approved child care health consultant, to be responsible for providing medications not covered in the approved medication administration training shall also be permitted to administer medications and/or medical treatments such as emergency seizure medication, insulin, or oxygen with individualized training and delegation from the Department-approved child care health consultant based on instructions from the child's individualized health care plan.

3c. Staff may be trained and delegated in the administration of a single rescue medication or rescue medical intervention by the center's Department-approved child care health consultant. Such training and delegation shall qualify the staff member to provide a rescue medication or treatment for a specific child based on instructions from the child's individualized health care plan.

G7. All medications, except those medications specified in the Department-approved medication administration training as emergency medications, must be locked and inaccessible to children, but available to staff trained in administering medication. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the center's policies. Access to these medications must be limited.

1a. Emergency medications are not required to be locked but must be stored in an area inaccessible to children, and easily accessible and identifiable to staff. Emergency medications must be stored in accordance with the Department-approved child care health consultant's recommendation.

2b. When away from the classroom, staff assigned to supervise the child must carry the emergency medication.

H8. The center must have a written policy on the storage and access of inhalers and epinephrine carried by school-age children. The policy must include a written contract with the parent(s)/guardian(s) and child acknowledgement assigning levels of responsibility of each individual. This contract includes orders for the medication from a health care provider, along with confirmation from the health care provider and the Department-approved child care health consultant that the student has been instructed and is capable of self-administration of the prescribed medications.

I9. Children are not allowed to bring medications to child care unless accompanied by a responsible adult.

J10. If a medication is out of date or left over, the parent(s)/guardian(s) is responsible for picking up the medication. If the parent(s)/guardian(s) do not respond, the center must dispose of the medications as required by the Colorado Department of Public Health and Environment.

K11. Topical preparations such as petroleum jelly, diaper rash ointments, sunscreen, insect repellent, and other ointments may be administered to children with written authorization from the parent(s)/guardian(s). These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing health care provider.

L12. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

1a. Child's name and birthdate;

2b. name of the medication, dosage, and route;

3c. time medication is to be given by written medication authorization;

4d. time medication is administered to child;

5e. Special instructions;

6f. Name and initials of the individuals giving the medication; and,

7g. Notation if the medication was not given and the reason.

2.220C. SUN PROTECTION

A1. The center must obtain written authorization and instructions from the parent(s)/guardian(s) for the application of sunscreen or the use of another form of parent(s)/guardian(s) approved sun protection with a full-spectrum ultraviolet A/ ultraviolet B (UVA/UVB) rating of sun protection factor (SPF) thirty (30) or greater to their children's exposed skin prior to outside play year-round. a doctor's permission is not needed to use sunscreen at the center.

B2. The center must apply sunscreen, have the parent(s)/guardian(s) apply sunscreen, or use another form of parent/guardian approved sun protection for children prior to children going outside. Sunscreen must be reapplied as directed by the product label.

1a. When the parent(s)/guardian(s) applies sunscreen, the center must have a mechanism for documenting application times to ensure sunscreen is reapplied as directed by the product label. If documentation of application time is not available, the center must ensure that sunscreen is applied thirty (30) minutes before going outdoors. If the child will be outside for more than one (1) hour, sunscreen must be reapplied every two (2) hours.

C3. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

D4. If sunscreen is provided by the center, parent(s)/guardian(s) must be notified in advance, in writing, of the type of sunscreen the center will use.

E5. Children over four (4) years of age may apply sunscreen to themselves under the direct supervision of a staff member.

F6. Infants under six (6) months must be kept out of direct sunlight while outdoors.

7.702.6 CHILD CARE SERVICES

2.2217.702.61 PERSONAL HYGIENE

A. Diapering

1. All diaper change areas must:

a. Be a minimum of thirty-six (36) by eighteen (18) inches in size and large enough to accommodate the size of the child;

b. Have a place inaccessible to children for storing all diaper change supplies and disinfecting solutions and products;

c. Have a sufficient supply of diapers at all times; and;

d. Be located and arranged to provide privacy for older children in need of diaper changing.

2. Children being diapered must be within arm’s reach of the staff member and actively supervised throughout the diapering process.

3. One (1) diaper change area is required in every infant and toddler classroom.

4. One (1) designated diaper change area is required for every twenty-four (24) preschool age children.

b. Toileting

1. There must be no attempt to toilet train children until they are able to communicate or otherwise indicate need, help manage their own clothing, and be able to access toileting facilities.

2. For each child who is learning to use a toilet, the child's individual developmental abilities and needs must be accommodated as stated in the written policies and procedures for the center.

2.222~~7.702.62~~ PHYSICAL CARE AND SUPERVISION

A. General

1. All children must be under the direct supervision at all times of a qualified adult who has been assigned the responsibility to supervise.

2. The time a child arrives and leaves the center each day must be recorded. Staff members must complete written attendance verification periodically throughout the day, including during transitions.

3. Staff must be awake, alert, and actively supervising all children.

4. Staff must directly supervise children and maintain staff to child ratio during special activities that occur with an outside vendor or provider and where the vendor uses their expert staff to facilitate the activity.

5. The staff must ensure that children are dressed appropriately for the weather before going outside.

B. Infant and Toddler Programs

1. Outside of mealtimes, children who are awake must not be confined for more than fifteen (15) minutes at a time to cribs, playpens, swings, highchairs, infant seats, or other equipment that confines movement. Children must have the opportunity for freedom of gross motor movement.

2. Throughout the day, each child must have frequent, individual, personal contact, and attention from an adult, such as being held, rocked, taken on walks inside and outside the center, talked to, read to, and sung to.

3. Staff must investigate whenever children cry, scream, or appear to withdraw and must try to verbally or physically soothe the child. When putting infants to sleep, staff may allow for a period of no longer than ten (10) minutes without verbally or physically soothing the child to enable the infant to try to self soothe and fall asleep.

4. Children must be allowed to form and observe their own pattern of sleep and waking periods. Special provision must be made so that children requiring a morning nap time have a separate area for their nap apart from space used for play.

a. Children must be allowed to leave their sleeping area immediately upon waking.

C. Safe Sleep Environments for Infants

1. Each infant up to eighteen (18) months of age and enrolled in the infant program must be provided with an individual crib, futon approved for infants, or other approved sleep/rest equipment meeting Consumer Product Safety Commission (CPSC) standards. Individual cribs or futons must provide each infant with sufficient space for the infant's length, size, and movement.

2. In the infant room, soft bedding or materials that could pose a suffocation hazard are not permitted in cribs, futons approved for infants, or other approved sleep/rest equipment. Soft bedding means, but is not limited to, any soft sleep surface like bumper pads, pillows, blankets, quilts, comforters, sleep positioning devices, sheepskins, blankets, flat sheets, cloth diaper bibs, plush toys, pacifiers with stuffed animals attached, and stuffed animals.

    a. Mattresses for cribs and futons must have a properly fitted, clean sheet.

3. Approved sleeping equipment must be firm and mattresses must fit snugly ensuring no more than two fingers are able to be inserted between the mattress and the side of the approved sleeping equipment.

4. Toys, including mobiles and other types of play equipment that are designed to be attached to any part of sleeping equipment, must be kept away from sleeping infants and out of sleep environments, including hanging toys. Blankets and other items must not be hung from or draped over the sides or any part of sleeping equipment.

5. All sleep/rest equipment must be safe, sturdy, and free from hazards including, but not limited to broken or loose slats, torn mattress, chipping paint or loose screws.

6. Drop side and stacking cribs are prohibited.

7. Bassinets and playpens are prohibited in child care centers.

8. Other sleep equipment not manufactured for commercial use is prohibited.

9. An infant must be placed on their~~his/her~~ back for sleeping.

10. Alternative sleep positions for infants must only be allowed with a health care plan completed and signed by the child's physician.

11. Swaddling of infants must only be allowed with a health care plan completed and signed by the child's health care provider.

12. Each infant up to twelve (12) months of age who uses a pacifier must have the pacifier offered when being put down to sleep unless the parent(s)/guardian(s) direct(s) otherwise.

13. Infant sound monitors must be used in separate sleeping rooms for infants unless qualified staff remain in the room with sleeping infants at all times. When monitors are used, the following conditions must be met:

    a. The sound monitoring equipment is able to pick up the sounds of all sleeping infants;

b. The receiver of the sound monitoring equipment is actively monitored by staff at all times;

c. All sleeping infants must be physically observed at least every ten (10) minutes by a staff member;

d. Sound monitoring equipment must be regularly checked to ensure it is working correctly; and~~,~~

e. The monitor must be out of reach of children.

14. Separate sleep rooms are prohibited in new construction, change of governing body, and change of capacity in child care centers.

15. Infants who fall asleep in a piece of equipment not approved for sleep must immediately be moved to their approved sleep area and placed on their back to sleep.

16. Cribs must be used for sleeping, not extended play nor confinement.

17. If music is played in the infant sleep area, the music must not be played at a loud volume that would prevent infants from being heard by staff. Music equipment must not be placed under a crib or within three (3) feet of the sleeping infant.

18. Supervised tummy time must be offered to infants one (1) month of age or older at least four (4) times per day for full day programs for short periods (3-5 minutes) and increase the amount of time as the infant shows they enjoy the activity. If the infant falls asleep during tummy time, immediately place him/her on their back in approved sleeping equipment.

19. When staff place infants in approved sleeping equipment for sleep, they must check to ensure that the temperature in the room is comfortable for a lightly clothed adult, check the infants to ensure that they are comfortably clothed (not overheated or sweaty), and that bibs, necklaces, and garments with ties or hoods are removed.

    a. Clothing sacks or other clothing designed for sleep must be worn in lieu of blankets if needed for additional warmth. Clothing must not restrict the movement of the child's arms or legs.

20. Infants must not be placed to sleep in the same crib or futon as another infant or child at the same time.

D. Rest Time and Equipment

1. Children must not be forced to sleep.

2. In rooms used for napping, the lighting must be dim at nap time to promote an atmosphere conducive to sleep but must be bright enough for supervision of children.

3. When the room provided for rest is used for other program activities, the cots, pads, and linens must be stored in an area that is not included in the required square footage assigned for play space.

4. In the toddler room, a crib, sleeping cot, or two (2) inch mat must be provided for each child, and there must be a minimum of two (2) feet between each crib or cot. Aisles between cots or cribs must be kept free of all obstructions while cribs are occupied. No

child less than the age of two (2) years should use a cot for sleeping without written permission of the parent or guardian.

a. Individual cribs must provide each toddler with sufficient space for the toddler's length, size, and movement, and must meet federal Consumer Product Safety Commission standards. Each crib must be fitted with a firm, comfortable mattress. If individual cribs are used, they must be separated by a sturdy divider from the area used for activities.

b. Sleeping cots and mats must be of firm construction and in good repair.

c. A fitted sheet and a blanket, or suitable covering, must be provided for each child to be used only by that child.

5. If preschool-age children are in care for longer than five (5) hours, the center must provide at least a thirty (30) minute rest period meeting the following:

a. A firm cot or two (2) inch mat with a sheet and blanket, or other suitable covering, must be provided for each child;

1. Cots or pads must be spaced at least two (2) feet apart on all sides during rest time. Children must have a safe area in which to rest that is easily supervised, out of the path of traffic, and free of hazards.

b. Quiet activities must be available for children who do not sleep during the thirty (30) minute period. Older children requiring a rest time must be given one;

c. Children who do not sleep after thirty (30) minutes must be allowed to move to another area and be provided with quiet toys and equipment to play with such as puzzles or books; and~~,~~

d. Children who fall asleep must be allowed to leave their napping area within ten (10) minutes of waking.

2.223~~7.702.63~~ FOOD AND NUTRITION

A. Meals and Snacks provided by the center

1. All meals and snacks provided by the center must meet current United States Department of Agriculture (USDA)~~,~~ Child and Adult Care Food Program (CACFP) meal pattern requirements and be offered at suitable intervals not more than three (3) hours apart. Children who are at the center for more than four (4) hours, day or evening, must be offered a meal. Arrangements must be made for feeding children who are in care before 6 a.m. or after 6 p.m.

2. If 100% fruit juice, which is not a sugar sweetened beverage, is offered as part of meals and/or snacks, it must be limited to no more than two (2) times per week.

3. Centers must not provide sugar sweetened beverages to children. These are beverages that have been sweetened with various forms of sugars that add calories and include, but are not limited to: soda, fruitades, fruit drinks, flavored milks, and sports and energy drinks.

4. The size of servings must be suitable for the child's age and sufficient time must be allowed so that meals are unhurried.

5. Foods offered shall be age appropriate and not pose a choking hazard.

6. In centers that do not regularly provide a meal, if a child brings a meal from home that does not appear to meet current USDA Child and Adult Care Food Program meal pattern requirements, the center must have foods available to offer as a supplement to that meal.

7. Staff members must sit with the children and encourage them to try a variety of food served. During meals, children should be encouraged to engage in conversation and to express their independence.

8. Children must not be given foods that are contrary to the religious beliefs of their families or that are known to cause an allergic reaction or a health hazard.

9. Food and beverages are not to be used as a reward.

10. Meal menus must be planned at least one week in advance, dated, and posted in a place visible to parents. After use, menus must be filed and retained for three (3) months.

11. A table, counter, or shelf, separate from the diaper changing area, must be available for preparing infants' and toddlers' food.

B. Feeding the Infant

1. An individualized diet and feeding schedule must be provided according to a written plan submitted by the parent or by the child's physician with the knowledge and consent of the parent. A change of diet and schedule must be noted on each child's daily activity schedule and posted in an area clearly visible to the staff.

2. All infants less than six (6) months of age must be held for bottle feeding. Bottles must not be propped. Older infants must not be allowed to hold their own bottles when lying flat. Bottles must not be allowed in a crib with the infant.

3. Older infants must be provided with suitable solid foods that encourage freedom in self-feeding and must be fed in safe chairs such as highchairs or baby-feeding tables.

4. When the infant program provides food other than breast milk or formula, food must be varied and include food from cereal, vegetable, fruit, and protein sources. When the center does not provide solid food, it must supply any additional foods and/or monitor the infant's total nutritional intake.

5. A staff member may not mix cereal with breast milk or formula and feed it to an infant from a bottle or infant feeder unless there are written instructions from the child's health care provider.

6. In infant nurseries, an adequate number of highchairs, or other suitable pieces of equipment that meet federal Consumer Product Safety Commission standards, must be provided for infant feeding.

7. Children who are actively eating may be in a highchair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved once feeding is complete.

C. Feeding the Toddler

1. Staff members must either feed toddlers or supervise them when they are eating, and children must be encouraged to try a variety of food served.

2. Toddlers must be sitting when eating or drinking.

3. Children who are actively eating may be in a highchair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved away from the feeding location once feeding is complete.

2.224~~7.702.64~~ GUIDANCE

A. Guidance used at the center must be appropriate to the development of the child and is used as an opportunity to teach children social-emotional skills, such as self-regulation, problem-solving, and empathy for others.

B. Children must not be subjected to physical or emotional harm, humiliation, or threats.

C. The director must not use, or permit a staff person or child to use, corporal ~~or other harsh~~ punishment as defined in section 22-1-140,C.R.S.

D. Guidance must not be associated with food, rest, or toileting. No child should be punished for toileting accidents. Food must not be denied to or forced upon a child as a disciplinary measure.

E. Physical activity and outdoor time must not be withheld as a disciplinary measure.

F. Separation, when used for guidance, must not exceed five (5) minutes and must be appropriate for the child's development. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked, closed room, or closet.

G. Verbal abuse and derogatory remarks about the child are not permitted.

H. Any form of restraint is not permitted.

I. Physical redirection may be used to keep a child from immediate imminent danger. The child must be immediately released once removed from imminent danger.

2.225~~7.702.65~~ ACTIVITIES

A. Activity Schedules

1. The center must carry out a planned program suitable to the needs of the children. This program must be described in writing and be available for review when requested by the Department or by parents or guardians of children in care.

2. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather, to children toddler age and older for no less than sixty (60) minutes total for full day programs. Activities do not have to occur all at once.

   a. Programs who qualify for an outdoor space hardship per rule section 2.231(B)~~7.702.74, B,1~~, must provide daily physical gross motor activities indoors or outdoors.

3. Children's access to outdoor space must be provided daily, except during inclement weather.

4. Infants must be provided access to outdoor play at least three (3) times per week, weather permitting.

5. If the center takes children on routine short excursions, such activities and locations must be posted at the center.

6. Portable first aid kits must be available to staff at all times, including field trips and short excursions, and must be checked and restocked on at least a monthly basis.

7. If a child participates in activities away from the facility, the center must obtain the parent or guardian's written permission for the child to participate in the activity at a specific location and day. Staff ratios found at rule section 2.216~~7.702.46,~~ must be maintained.

B. Screen Time and Media Use

1. Screen time, which includes, television, recorded media, computer, tablet, cell phones, video games, and other media devices, is prohibited for children less than two (2) years of age.

2. Screen time is prohibited during snack or meal times.

3. All media that children are exposed to must not contain explicit language or topics.

4. For children two (2) to five (5) years of age, screen time must be limited to no more than thirty (30) minutes per day.

5. For children two (2) years of age and older, screen time may only exceed sixty (60) minutes for a special occasion and must not occur more than once every two (2) weeks.

6. All children must be provided with a developmentally appropriate alternative activity once the child(ren) loses interest in the media activity.

7. There is no time restriction for children using personal adaptive equipment or assistive technology or participating in mandatory school activities.

C. Field Trips

1. The center must notify the children's parents or guardians in advance of any field trip. The staff-child ratio found at rule section 2.216~~7.702.46,~~ must be maintained at all times.

2. All groups of children must be actively supervised by a qualified early childhood teacher at all times.

3. Children must be actively supervised at all times.

4. An accurate itinerary must remain at the center.

5. When taking children on a field trip, staff must have the following information about each child: name, address, and phone number of the child's physician or other appropriate health care professional and the written authorization from the parent or guardian for emergency medical care.

6. If children attending the field trip require routine medications be administered during the field trip or have special health needs, a staff member with current medication administration training and delegation must attend on the field trip.

7. A list of all children and staff on a field trip must be kept at the center.

2.226~~7.702.66~~ TRANSPORTATION

A. Transportation Provided by the Center

1. The center is responsible for any children it transports.

2. The center must obtain written permission from the parent(s)/guardian(s) for any transportation of their child(ren) while in care.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at rule section 2.216~~7.702.46~~. The driver of the vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle and must remain seated while the vehicle is in motion. All children must be secured in a child restraint system that is appropriate for the age and development of that child. The child restraint must conform to all applicable Federal Motor Vehicle Safety Standards and Colorado child passenger safety laws.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Children must not be left unattended in the vehicle.

8. Transportation arrangements for school-age children must be by agreement between the center and the children's parents, *i.e.*, whether the child can walk, ride a bicycle, or travel in a car. The center must monitor the children to be sure they arrive at the center when expected and follow up on their whereabouts if they are late. Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

9. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

10. Attendance must be verified as children enter and exit the vehicle to ensure all children are accounted for.

B. Requirements for Vehicles

1. Any vehicle used for the transportation of children to and from the center or during center activities must meet the following requirements:

   a. The vehicle must be enclosed and have working door locks;

   b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

   c. The vehicle must be kept in satisfactory condition to ensure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division;

d. Seating must be comfortable with a seat of at least ten (10) inches wide for each child;

e. The provider must not transport more children than any vehicle is able to safely accommodate when child restraint systems and seat belts are properly installed in the vehicle. Two (2) or more children must never be restrained in one (1) seat belt or child restraint system; and~~,~~

f. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review.

2. Any child transported must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety law that requires:

a. Children under the age of one (1) year must ride in the back seat of the vehicle, in a rear-facing child restraint system, according to manufacturer's instructions until they are at least one (1) year old and weigh at least twenty (20) pounds.

b. Children ages one (1) to four (4) years and who weigh twenty (20) to forty (40) pounds must be properly restrained in a rear- facing or forward-facing child restraint system, according to the manufacturer's instructions.

c. Children who are under eight (8) years of age and who are being transported, shall be properly restrained in a child restraint system, according to manufacturer's instructions.

d. Children who are at least eight (8) years of age but less than sixteen (16) years of age who are being transported, shall be properly restrained in a safety belt or child restraint system according to manufacturer's instructions.

i. Children who meet the requirements to be restrained in a safety belt must be instructed and monitored to keep the seat belt properly fastened and adjusted.

e. Two or more children must never be restrained in one (1) seat belt or child restraint system.

~~In passenger vehicles, which include automobiles, station wagons, and vans with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10,000 pounds, the following is required:~~

~~a. Each child must be restrained in an individual seat belt;~~

~~b. Two (2) or more children must never be restrained in one (1) seat belt;~~

~~c. Lap belts must be secured low and tight across the upper thighs and under the belly; and,~~

~~d. Children must be instructed and encouraged to keep the seat belt properly fastened and adjusted.~~

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must comply with applicable laws of the Colorado Department of Revenue, Motor Vehicle Division, and ordinances of the municipality in which the center operates.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. The driver must not eat, smoke, or use a cellular device while driving.

7. The required staff to child ratio must be maintained at all times.

8. All drivers must be at least twenty (20) years of age.

9. Drivers must complete a minimum of four (4) hours of Department-approved driver training. The Department's approval will be based on the review of a training curriculum that includes at a minimum: behind the wheel training; participant transport attendance procedures including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedure; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and vehicle evacuation.

D. Transporting Infants and Toddlers

1. Children must be properly fastened into a child restraint system that conforms to all applicable Federal Motor Vehicle Safety Standards pursuant to Colorado law.

2. There must be at least one (1) adult, in addition to the driver, for each five (5) or fewer infants/toddlers being transported. Each adult must have a current Department-approved First Aid and Safety certificate that includes CPR for all ages of children.

3. An adult must accompany each child to and from the vehicle.

4. Infants and toddlers must not be transported in the front seat of a vehicle.

2.227~~7.702.67~~ OVERNIGHT CARE

A. All of the provisions required in rule section 2.200~~7.702~~ of these rules for child care centers apply to centers offering overnight care of children which includes care that extends beyond midnight. In addition, centers must observe the following provisions:

1. A nutritious evening meal must be made available to children. If provided by the center, the meal must meet current USDA Child and Adult Care Food Program meal pattern requirements.

2. Quiet activities must immediately precede the children's bedtime.

3. Children's faces and hands must be washed, children's teeth must be brushed according to the child's age, and children must be changed into comfortable clothing for sleeping.

4. Each child must be provided with a comfortable separate bed, crib, or cot suitable for the child's age or a two (2) inch sleeping mat or mattress. Each child must also be provided with sheets and a clean, washable covering. If mats or mattresses are used, the room temperature at floor level must be sixty-eight (68) to seventy-two (72) degrees. Pads and mattresses must be fitted with a clean, washable, removable covering. Permission of parents/guardians must be obtained for each child who uses a sleeping mat or mattress placed on the floor.

5. Staff must be awake, alert, and actively supervising all children.

6. The staff-child ratio for sleeping children is one (1) adult to every six (6) or fewer children in attendance. Once one (1) child is awake, the staff-child ratio as defined in rule section 2.2167.702.46, must be maintained.

7.702.7 CHILD CARE EQUIPMENT AND MATERIALS

2.2287.702.71 GENERAL REQUIREMENTS

A. Durable furniture such as tables and chairs must be child-sized or appropriately adapted for children's use.

B. Window blind cords must be secured out of children's reach to prevent strangulation.

C. Items labeled "keep out of reach of children" must be inaccessible to children.

D. Staples must be inaccessible to children less than three (3) years of age.

E. Thumb tacks must not be used in areas accessible to children less than three (3) years of age.

F. Glitter must not be used with children under three (3) years of age.

G. Loose plastic bags must be stored in areas inaccessible to children.

H. Sharp tools and instruments must be stored in areas inaccessible to children.

I. For every five (5) infants for which the center is licensed, there must be at least one (1) piece of sturdy mobile equipment that is easily accessible to safely and effectively evacuate infants.

J. If using a crib is not designed for emergency evacuation, the crib must be reinforced with a kit manufactured for this purpose.

K. Evacuation equipment must not block exit routes. Nothing may be stored in or under any evacuation equipment.

Evacuation equipment must:

1. Be located in the room or immediately outside the interior classroom door;

2. Be labeled for easy identification;

3. Be ready for use; and.

4. Fit through doorways.

L. Toys, toy parts, furnishings, equipment, and any materials accessible to children under than three (3) years of age must not be a choke hazard or able to be inhaled. Any area of the facility accessible to children less than three (3) years of age must be free of any choke or inhalation hazards.

M. Toys, toy parts, furnishings, equipment, and materials made of brittle, easily breakable plastic or glass are not permitted for children less than five (5) years of age.

N. The infant program must have an adult rocking chair.

O. In the infant program, some play equipment from the following list must be provided: rubber washable toys, rattles, blocks, balls, and music player.

P. Some sand or equivalent dry material or water play should be offered to children eighteen (18) months of age or older, indoors or outdoors, at least monthly and year-round.

Q. At least three (3) examples of materials must be available to the children that are developmentally appropriate, culturally sensitive, and represent diversity in ethnicity, race, gender, age, and abilities. Variety must exist in toys, books, and pictures.

R. The center must have enough play materials and equipment so that at any one time each child for which the center is licensed for can be individually involved. Separate play rooms or separate interest centers must be provided for each category of equipment required for the program. A variety of material and equipment from the following categories must be available:

1. Art;

2. Blocks and accessories;

3. Books and pictures;

4. Dramatic play;

5. Gross motor;

6. Manipulatives;

7. Music; and~~,~~

8. Science and math.

S. In the toddler program, some play materials and equipment easily accessible to children must be provided from each of the following categories:

1. Books and pictures;

2. Dramatic play;

3. Gross motor;

4. Manipulatives; and~~,~~

5. Music.

T. If the center serves school-age children, it must have some age-appropriate materials and equipment from each of the following categories:

1. Arts and crafts;

2. Games;

3. Sports;

4. Science and math; and,

5. Literature.

U. An appropriate supply of play materials must be readily accessible to children and must be arranged in an orderly manner so that children can select, remove, and replace the play materials either independently or with minimum assistance.

2.2297.702.72 INDOOR/OUTDOOR EQUIPMENT, MATERIALS, AND SURFACES

A. A variety of play equipment and materials appropriate for children's age, size, developmental needs, and activities must be provided for both indoor and outdoor structured and free play.

1. Programs who qualify for an outdoor space hardship per rule section 2.231(B)(1)7.702.74, B, 1 are not required to provide equipment and materials for outdoor play.

B. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe, and free of hazards.

C. All other indoor or outdoor playground facilities, with permanently installed or portable climbing equipment, without an annually certified playground inspection must meet the following requirements:

1. Resilient Surfacing

a. All climbing equipment eighteen (18) inches or higher must have resilient surfacing of at least six (6) inches in the use zone surrounding the equipment.

b. Department-approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, shredded rubber tires, and sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and Astroturf with built in resilient pad.

c. Loose fill resilient surface must be raked regularly to retain its resiliency and to retain a depth of at least six (6) inches.

d. Any newly installed solid unitary materials used for resilient materials must have written documentation from manufacturer stating the material meet current federal safety standards. The documentation must be available for review at all times.

2. Maximum Height of Equipment

a. The maximum height for toddler climbing equipment cannot exceed thirty-two (32) inches.

b. The maximum height for preschool and school-age climbing equipment must not exceed six (6) feet in height with six (6) inches of Department-approved resilient surfacing.

3. Use Zone

a. Toddler climbing equipment must have a three (3) foot use zone surrounding the equipment. Toddler slides require a six (6) foot use zone extending out from the base of the slide.

b. The use zone for swings used by toddlers is determined by measuring the distance from the top of the swing to the bottom of the bucket seat. This measured distance must extend from both the front and the back of the swing.

c. Preschool and school-age climbing equipment must have a six (6) foot use zone surrounding the equipment. For slides exceeding six (6) feet in height, the use zone from the base of the slide must be as long as the slide height.

d. The use zone for swings used by children preschool age and older is determined by measuring the distance from the top of the swing to the ground. This measured distance must extend from both the front and the back of the swing.

4. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

5. Metal equipment must be placed in the shade.

6. All pieces of playground equipment must be designed to guard against entrapment and strangulation. Any openings in gross motor equipment above ground must be smaller than three and one half (3 ½) inches or greater than nine (9) inches to prevent entrapment.

7. Swings must have seats made of a flexible material and all “S” hooks must be secured.

8. All outdoor play areas used for children’s activities must be checked daily and kept safe and free from hazardous materials or debris by removal of debris, dilapidated structures, and broken or worn play equipment. The staff must identify hazardous, high-risk areas; those areas must be made inaccessible to children to reduce the possibility of injuries and accidents.

D. For purposes of a playground facility inspection, the Department shall accept as satisfactory proof of valid certification of the playground facility, certification, or a copy of certification, from an individual who is licensed or certified to perform playground safety inspections through the National Recreation and Park Association, or other nationally recognized playground facility safety organization. The Department shall not require a duplicate inspection if there is a satisfactory inspection report.

1. All playground facilities who hold a certified playground safety inspection must maintain resilient surfacing in compliance with the certification.

E. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading. The helmet must be removed after the activity. Motorized riding toys are not permitted.

F. Trampolines and inflatable bouncers are prohibited.

2.230~~7.702.73~~ INDOOR LEARNING ENVIRONMENT

A. Indoor Space Requirements

1. There must be open, indoor play space of at least thirty (30) square feet of floor space per child, including space for movable furniture and equipment. For space to be counted in the square footage calculation, the space must be accessible and used by children.

2. Indoor play areas must be uncluttered, safe, and allow for freedom of movement.

3. Adequate storage space must be provided for indoor and outdoor equipment and supplies.

4. Number of Children Allowed in One (1) Room

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN IN A ROOM
6 weeks to 18 months	10 infants
12 months to 18 months	10 infants
12 months to 36 months	20 toddlers
18 months to 24 months	20 toddlers
24 months to 36 months	28 toddlers
30 months to 36 months	28 toddlers

5. Square Footage Requirement per Child

AGE OF CHILD	SEPARATE FREE PLAY AREA	SEPARATE SLEEP AREA	COMBINED SLEEP AND PLAY AREA
6 weeks to 18 months (infants)	35 square feet	Adequate space to accommodate size of cribs and needs of infant and staff	50 square feet
12 months to 36 months (toddlers)	30 square feet	30 square feet	45 square feet
2-1/2 years to 5 years (preschool)	N/A	N/A	30 square feet
5 years and over (school-age)	N/A	N/A	30 square feet

6. In the infant program, the minimum indoor space per infant for sleep and activities is fifty (50) square feet.

    1. In a combination sleep/activity rooms, the sleep area must be separated by a sturdy divider from the area used for activities, and cribs must be arranged so that all infants and cribs are easily accessible to staff members.

2.231~~7.702.74~~ OUTDOOR LEARNING ENVIRONMENT

A. Outdoor Space Requirements

1. Readily accessible gross motor play space and access to outdoor space must be provided.

2. The outdoor learning environment for preschool age and older must provide a minimum of seventy-five (75) square feet of space per child for a group of children using the total play area at any one time. the total play area must accommodate at least thirty-three percent (33%) of the licensed capacity for children preschool age and older or a minimum of 1,500 square feet, whichever is greater.

    a. Programs who qualify for an outdoor space hardship per rule section 2.231(B)(1)~~7.702.74, B, 1,~~ must meet the minimum outdoor learning environment square footage requirements indoors or through a combination of indoor and outdoor space.

3. The play area must be fenced or have natural barriers, such as hedges or stationary walls at least four (4) feet high, to restrict children from unsafe areas.

    a. Centers licensed to provide care for preschool-age children only may use the centers perimeter fencing if they maintain a ratio of one (1) staff member to eight (8) children.

4. The play area must be designed so that it is easily supervised.

5. A minimum of one hundred fifty (150) square feet of shaded area in the fenced play area must be provided to guard children against the hazards of excessive sun and heat. Shaded areas must be provided year-round.

6 In the infant program, the outdoor play area must be a minimum of four hundred (400) square feet.

7. In the infant program, the outdoor area can be used by other age groups at the center, but it must not be used by any other group of children while infants are using it.

8. The total outdoor play area for toddler age groups must be a minimum of seven hundred fifty (750) square feet if licensed for ten (10) toddlers and one thousand fifty (1,050) square feet if licensed for fourteen (14) or more toddlers, or seventy-five (75) square feet per child for the largest group size for which the program is licensed.

9. In the toddler program, the outdoor play area can be shared by infants, but infants and toddlers must not be allowed to use the play area at the same time.

B. Outdoor Space Hardship

1. If an outdoor play space is not directly attached to the facility or accessible via secure access, or the child care facility cannot meet outdoor space requirements due to a hardship based on the location of the facility, the facility must develop a site-specific plan, which will be submitted to the Department for review and approval, that includes the following:

    a. Identification of an accessible (appropriate for the age group of children served) alternate outdoor space including a description and approximate square footage of the space;

    b. A diagram outlining how children will safely travel to and from this location;

    c. A plan for supervision, including any special staffing requirements, to safely access and utilize the alternate outdoor space that includes:

(1) Attendance tracking upon arrival to the outdoor space and return to the facility;

(2) Children's toileting and diapering needs;

(3) Children's routine and emergency medical needs including the use of first aid kits and accessibility of emergency contact information when not on site at the child care facility;

(4) Plans for alternate activities if the outdoor space is unavailable; and~~,~~

(5) If play equipment or climbing structures are present in the outdoor space, a plan for assessing safety of equipment and supervising age-appropriate play~~.~~;

d. An emergency evacuation plan including the location of a secondary site for reunification with parents in the case of an emergency while at the offsite location and plans for accessing shelter in the case of emergency; and,

e. A policy that notifies the parent(s)/guardian(s) of the alternate outdoor space.

2. If the outdoor space becomes unusable or the program cannot maintain what was approved in the plan, the program must submit a new plan to the Department within ten (10) calendar days of a change in the usability of such outdoor space.

3. Child care facilities licensed prior to December 1, 2021, may not reduce or eliminate existing licensed outdoor space to qualify for the outdoor space hardship.

~~7.702.8~~ BUILDINGS AND FACILITIES

2.232~~7.702.81~~ BUILDING SITE

A. General

1. Centers can be located in a private residence only when that portion of the residence to which children have access is used exclusively for the care of children during the hours the center is in operation or is separate from the living quarters of the family.

2. No other business can operate in the rooms used by the center during the hours of child care.

3. Rooms licensed for specific ages of children cannot be used for other ages of children without the prior written approval of the licensing authority.

4. Prior to licensure, if the infant or toddler program is located on a floor above or below the main floor of egress leading directly outside, the child care facility must develop and submit an alternate location plan for approval by the Department that includes following:

a. Fire department and building department approval per the locally adopted fire and building codes;

b. An emergency evacuation plan with identified primary and secondary areas of refuge;

c. Any special equipment necessary to operate in and evacuate safely from the alternate location; and~~,~~

d. Any special staffing and training requirements to ensure the ability to safely evacuate the alternate location.

B. Infant Programs

1. If the infant program is in the same building as a facility caring for children of other ages, the infant program must be physically separated in different rooms by walls no less than eight (8) feet and full doors.

C. Toddler Program

1. If the toddler program is in the same building as a facility caring for children of other ages, the toddler program must be physically separated in different rooms by walls no less than eight (8) feet and full doors.

2. If the toddler program is combined with a large child care center or an infant program, toddler facilities, both indoor and outdoor, must be completely separate from facilities for other age groups, except as allowed by rule sections 2.231(A)(6) and (8)~~7.702.74, A, 6 and 8~~. If the facility wishes to provide opportunities for a toddler to have occasional contact with siblings, plans must be approved by the Department licensing representative.

2.233~~7.702.82~~ BUILDING PLANS AND CONSTRUCTION

A. The center must comply with applicable state and local building and fire codes.

B. Prior to construction, architectural plans for new buildings or for remodeling of existing buildings must be submitted for review and approval by the Department, the local fire department, and the local building department as to appropriateness, adequacy, and suitability for child care functions.

2.234~~7.702.83~~ TOILET FACILITIES

A. Toilet facilities for the staff and other adults must be in separate restrooms or be separated by a partition from children's facilities, except in centers licensed for thirty (30) or fewer children and in centers with programs of four (4) hours or less.

1. In toilet facilities where the adult and children’s facilities are separated by a partition, adults and children must not use the facilities at the same time.

2. After January 1, 2022, staff and children toilet facilities must be separate in new construction.

B. Toilet facilities for children must be separate from rooms used for other purposes and must be located on the same floor as the inside play area.

C. A minimum of one (1) sink and one (1) flush toilet must be provided for each fifteen (15) or fewer children.

D. The same toilet facilities must not be used simultaneously by school-age children of all genders, and toilets for school-age children must be separated by partitions to provide privacy.

1. School-age children must be allowed the use of toilet facilities that correspond with their gender identity.

E Toilet facilities must be provided for children two (2) years of age and older.

F. Toilet facilities for toddlers must be located within their classroom.

2.235~~7.702.84~~ OFFICE FACILITIES

A. Office space separate from areas used by children must be provided for staff to perform administrative duties.

1. If the office space is accessible to children, it must be free of hazards.

B. The office must have sufficient space for maintenance and safe storage of children's and staff records and the center's business records.

~~7.702.9~~ SAFETY REQUIREMENTS

2.236~~7.702.91~~ GENERAL REQUIREMENTS

A. Firearms as defined in section~~§~~ 18-1-901(3)(h), C.R.S., are prohibited on the premises, both indoor and outdoor, and in any vehicle in which children are transported.

B. Buildings must be kept in good repair and maintained in a safe condition.

C. Major cleaning is prohibited in rooms occupied by children.

D. Volatile substances such as gasoline, kerosene, fuel oil, oil-based paints, firearms, explosives, and other hazardous items must not be stored in any area of the building used for child care.

E. Combustibles such as cleaning rags, mops, and cleaning compounds must be stored in well-ventilated areas, separated from flammable materials, and stored in areas inaccessible to children.

F. All heating units, gas or electric, must be installed and maintained per the manufacturer's specifications with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them.

G. Combustible materials must not be stored in hallways, stairways, boiler rooms, mechanical rooms, or electrical equipment rooms.

H. In rooms used by children, all electrical outlets that are accessible to children must have protective covers, or safety outlets must be installed.

I. Permanently located battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure. Batteries must be checked regularly.

J. Closets, attics, basements, cellars, and furnace rooms must be kept free from accumulation of extraneous materials such as furnishings, newspapers, and magazines.

K. Kitchens, including all hazardous items, must be inaccessible to children at all times.

2.237~~7.702.92~~ FIRE SAFETY

Centers must comply with the locally adopted fire code, including but not limited to the following:

A. Every building and structure must have the minimum required number of exits to permit the prompt escape of occupants in case of fire or other emergency. Additional safeguards must be provided for life safety in case any single safeguard is ineffective due to some human or mechanical failure.

B. Every building or structure must be constructed, arranged, equipped, maintained, and operated as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

C. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building can be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

D. No children younger than school age can be cared for in areas above or below the main floor of exit unless in compliance with all Codes and Standards as adopted by the local jurisdiction and approved by the local fire department, or except as provided in the location exception in rule section 2.232(A)(4)~~7.702.81, A, 4~~.

E. One (1) exit from each room must be directly to the exterior of the building or to a common hallway leading to the exterior. The exit path must not go through an intervening room such as a bathroom, another classroom, storage room, or kitchen.

F. All stairways, interior and exterior, that are used by children must be provided with handrails within reach of the children.

G. Regardless of the number of staff and children, exit doors shall be openable from the inside without the use of a key or any special knowledge or effort. Dead bolts may be installed on the main exit door, but the lock cannot be used during business hours, and there must a sign indicating that “this door must remain unlocked during business hours.”

H. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

I. Fire alarm and fire sprinklers must be provided in accordance with the locally adopted fire code. If a fire alarm system is installed, it must be used to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

~~7.702.100~~ DROP-IN, PART DAY, MOBILE PART-DAY PRESCHOOL, TEEN PARENT PROGRAMS, AND OTHER PROGRAMS OPERATED BY PUBLIC SCHOOL DISTRICTS

2.238~~7.702.101~~ DROP-IN PROGRAMS

A. Director Requirements

1. The director or assistant director of an extended hour drop-in child care center operating at least six (6) calendar days per week must be present at the center or involved in director activities at least fifty percent (50%) of the hours of operation of any day the center is in operation.

a. If the director is not on site at the center for a portion of any day that center is in operation, the director must be available by phone.

b. The director must be present in the center at least thirty (30) hours each week.

2. Whenever the director of a drop-in child care center cannot be present fifty percent (50%) of any day the center is in operation, an assistant director that meets one (1) of the following qualifications must be present:

a. At least one (1) year of experience as a qualified early childhood teacher at the drop-in child care center;

b. Eighteen (18) months of experience as a qualified early childhood teacher with children less than twelve (12) years of age and at least six (6) months experience at the drop-in child care center;

c. A Bachelor's, Master's, or Doctorate degree from an accredited college or university in one (1) of the human services field below:

(1) Child Development;

(2) Child Psychology;

(3) Early Childhood Education;

(4) Early Childhood Special Education;

(5) Educational Leadership and Administration;

(6) Elementary Education;

(7) Family and Human Development;

(8) Family Studies;

(9) Special Education; or~~,~~

d. Qualification as an early childhood teacher and completion of at least half of the required coursework for director qualifications, including one (1) of the following administration classes:

(1) Administration Of Early Childhood Care and Education Programs; or~~,~~

(2) Administration Human Relations for Early Childhood Professions or Introduction to Business.

B. Staff to Child Ratios

1. Drop-in child care centers may follow a ratio of one (1) adult for every eight (8) children for children in a mixed age group of two (2) years of age to twelve (12) years.

2. One (1) to two (2) children, one (1) year of age to two (2) years of age, may join the preschool age group of children for short periods of time for structured activities.

C. Health Care

1. For children attending a drop-in center, the parent(s)/guardian(s) of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care provider within thirty (30) calendar days or by the second visit, whichever is longer. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children less than two and one-half (2 ½) years of age. Subsequent statements are not required if there have been no health changes in the child and the parent(s)/guardian(s) attest in writing to the health status of the child on an annual basis. Children attending drop-in child care with special medical needs must have the statement from a health care provider as indicated in rule section 2.218(B)~~7.702.51, A, 2, b-e~~.

D. Rest Time Equipment

1. Drop-in child care centers must provide mats or cots for at least fifty percent (50%) of the licensed capacity of the center.

E. Play-Equipment and Materials

1. Drop-in child care centers must provide indoor gross motor equipment, including, but not limited to, an indoor climbing structure, an open area for indoor, and must provide gross activities at least two (2) times during each six (6) hour period of time.

F. Building Site- Toddler Program

1. A toddler program located in a drop-in child care center licensed for five (5) or fewer toddlers may be separated from the rest of the center by a five (5) foot wall.

2. Drop-in child care centers must provide a minimum of one (1) sink and one (1) toilet for each twenty (20) or fewer children.

3. Toilet facilities are not required to be located in the toddler classroom for drop-in child care centers licensed for ten (10) or fewer toddlers.

2.239~~7.702.102~~ PART-DAY PROGRAMS

A. Safe Sleep Environment

1. Supervised tummy time must be offered to infants one (1) month of age or older at least two (2) times per day for part day programs for short periods (3-5 minutes) and increase the amount of time as the infant shows they enjoy the activity. If the infant falls asleep during tummy time, immediately place him/her on their back in approved sleeping equipment.

B. Gross Motor Activities

1. Daily gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather. Activities do not have to occur all at once.

   a. Programs who qualify for an outdoor space hardship per rule section 2.231(B)(1)~~7.702.74, B, 1,~~ must provide daily physical gross motor activities indoors or outdoors.

2. Daily physical gross motor activities must be provided for children toddler age and older based on the program's hours of operation:

a. For programs operating up to three (3) hours per day, fifteen (15) minutes of gross motor activities is required.

b. For programs operating between three (3) and five (5) hours per day, thirty (30) minutes of gross motor activities is required.

2.240~~7.702.103~~ MOBILE PART-DAY PRESCHOOL PROGRAMS

A. Policies

1. Written schedules must be provided to parent(s)/guardian(s) and the Department. Any changes to location must be provided to parent(s)/guardian(s) and the Department in advance.

2. The program must have an emergency evacuation plan and location.

a. The program must develop a plan for transporting children, specific to each mobile unit, in the case of an emergency. The plan must be approved by the Department prior to caring for children.

B. Staff Qualifications

1. There must be a large child care center qualified director available during operating hours. A director can oversee multiple mobile preschool programs under the same governing body.

2. Each mobile preschool program must have a qualified early childhood teacher on site.

C. Supervision

1. Children must be directly supervised when entering and exiting the mobile preschool.

D. Child Care Equipment and Materials

1. A variety of developmentally appropriate materials, equipment, and learning activities from the following categories must be available so that for any one time at least half of the children for which the program is licensed can be individually involved:

a. Art;

b. Blocks and accessories;

c. Books and pictures;

d. Imaginative play;

e. Manipulatives;

f. Music; and

g. Science and math.

E. Facility Requirements

1. The mobile unit must be parked and appropriately secured prior to children arriving for care.

2. The use of handwashing sinks and toilets not located within the facility must be approved by the Colorado Department of Public Health and Environment.

3. If the mobile preschool is approved by the Colorado Department of Public Health and Environment to use a toilet located outside of the facility, there must be one (1) additional staff member, who is an assistant early childhood teacher or an early childhood teacher, to properly supervise and accompany the children to the toilet facilities.

4. If the Colorado Department of Public Health and Environment approves the use of a public restroom, the restroom must not be shared with the public during the hours the preschool is in operation.

5. There must be a minimum of fifteen (15) square feet per child in the mobile classroom.

6. The mobile preschool must be capable of maintaining a draft-free temperature of a minimum of sixty-eight (68) degrees Fahrenheit.

7. The program must have safely accessible access to an outdoor area for daily planned activities, during inclement weather, an indoor space must be available for gross motor activities.

   a. Programs who qualify for an outdoor space hardship per rule section 2.231(B)(1)~~7.702.74, B, 1,~~ must provide daily physical gross motor activities indoors.

F. Safety

1. Space heaters must have screens, a safety overheat protection, a safety trip-over switch, and be inaccessible to children.

2. The mobile preschool must have two (2) means of emergency egress.

2.241~~7.702.104~~ TEEN PARENT PROGRAMS OPERATED BY A PUBLIC SCHOOL DISTRICT

A. Infant programs affiliated with teen parent programs that are operated by accredited public school systems and on school premises may substitute the following age requirements for those at rule section 2.203(B)(3)~~7.702.1, B, 3~~:

1. The minimum age of infants in care is seven (7) days.

2. Infants between the ages of seven (7) and thirteen (13) days may be accepted for care only with written approval from a health care provider and if there are no medical complications for the infant and/or teen mother.

3. Infants fourteen (14) days of age and over may be accepted for care if there are no medical complications for the infant and/or teen mother.

4. The maximum age of infants in care may be extended only in those situations where no teen parent toddler program exists. In this circumstance, an infant may remain in the infant program until the end of the school semester in which the infant becomes eighteen (18) months old.

B. Infant and toddler programs affiliated with teen parent programs that are operated by accredited public school systems on school premises may substitute the following staff requirements for those at rule sections 2.215(B) and (C)7.702.45 B, C:

1. The director must be present in the infant program classroom or adjacent teen parent classroom at least sixty percent (60%) of any day the center is open.

2. If the director cannot be present sixty percent (60%) of any day, an individual who meets assistant director qualifications must substitute for the director.

3. Infant staff aides must be at least fifteen (15) years of age and may be parents-to-be, parents of enrolled infants, or students enrolled in a child care related course with the sponsoring school system.

4. Substitutes for infant program staff must be from the sponsoring school system''s list of approved substitute staff members. Substitutes who do not meet minimum staff qualifications can work no more than ten (10) consecutive business days per assignment. The dates and times must be recorded and made available for review at all times.

5. Substitutes for infant program staff must hold a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

C. Rest Time Equipment

1. Bassinets and playpens are allowed for use in a teen parent program when the teen parent(s) remain(s) on site.

2.2427.702.105 CHILD CARE PROGRAMS AND PRESCHOOLS OPERATED BY A PUBLIC SCHOOL DISTRICT

A. The administration of medical marijuana must comply with policies listed in sections §12-255-120 and, 12-255-127, and 2-30-116. C.R.S.

B. Director Requirements

1. Preschool age classrooms that are operated by public school districts are not required to have a large center director qualified staff member assigned to each program when they have an organizational structure that includes at least ten (10) administrative support elements from the following:

a. Colorado Preschool Program Coordinator;

b. Parent Educational Specialist;

c. Principal;

d. Health Coordinator;

e. Nurse;

f. Health Technician;

g. Food Service Director;

h. A Registered Dietitian or an individual with a Master's level or higher education in Nutrition;

i. Fire/Health/Safety Inspector;

j. Mental Health Team;

k. Speech Language Pathologist;

l. Occupational/Physical Therapist;

m. School Psychologist;

n. Family Outreach Worker;

o. Human Resource Specialist; or~~,~~

p. Transportation Manager.

2. The program must obtain a director who meets large center director qualifications if substantial evidence has been found leading to an adverse licensing action for any of the following:

a. Lack of supervision;

b. Operating out of the approved staff member to child ratio; or

c. Operating without sufficient qualified staff.

3. Programs who have their director privileges revoked may submit a request for consideration after a period of two (2) years from successful completion of the adverse licensing action.

C. Substitutes

1. Substitutes for directors of part-day public school preschools may be from the sponsoring school system's list of approved substitutes. Substitutes who do not meet director qualifications must consult with a qualified director on administering the center in accordance with early childhood principles and practices and licensing rules.

2. In licensed programs operated by public school districts, substitutes may be from the sponsoring school system's list of approved substitutes. Substitutes who do not meet qualifications for the position that they are substituting for can be used up to ten (10) calendar days per year. The dates and times must be recorded and made available for review at all times.

D. Outdoor Space Requirements

1. Licensed preschool programs operated by public school districts who do not meet fencing or barrier requirements in rule section 2.231(A)(3)~~7.702.74, A, 3,~~ may use the school's perimeter fencing if they maintain a ratio of one (1) staff member to eight (8) children.

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RULES REGULATING CHILDREN'S RESIDENT CAMPS

2.400 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 et seq. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 et seq. (the "Early Childhood Act"), C.R.S., and the Child Care Licensing Act, sections 26.5-5-301, et seq., C.R.S.

The specific rulemaking authorities granted for the Resident camps include sections XXX, C.R.S.

2.401 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities These rules and regulations shall govern the processes and procedures to become a licensed Resident Camp, and the health and safety requirements of Resident Camps in Colorado. In addition to the "General Rules for Child Care Facilities" in rule section 2.100, Children's Resident Camps shall follow the rules specified in this rule section 2.400, and the "Rules Regulating Special Activities" in rule section 2.600.

2.402 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed Resident Camp operating for three or more consecutive twenty-four-hour days during one or more seasons of the year for the care of five or more children.

~~7.711 RULES REGULATING CHILDREN'S RESIDENT CAMPS~~

~~In addition to the General Rules for Child Care Facilities, Children's Resident Camps shall follow the rules specified in this section and the "Rules Regulating Special Activities".~~

2.403~~7.711.1~~ DEFINITIONS

A. A "residential camp" means a facility operating for three or more consecutive twenty-four-hour days during one or more seasons of the year for the care of five or more children. The facility shall have as its purpose a group living experience offering education and recreational activities in an outdoor environment. The recreational experiences may occur at the permanent camp premises or on trips off the premises. A children's resident camp shall serve children who have completed kindergarten or are six years of age or older through children younger than nineteen years of age; except that a person nineteen years of age or twenty years of age may attend a children's resident camp if, within six months prior to attending the children's resident camp, he or she has attended or has graduated from high school.

B. A residential camp may have a "primitive camp" which is a portion of the permanent camp premises or another site at which the basic needs for camp operation, such as places of abode, water supply systems, and permanent toilet and/or cooking facilities, are not usually provided.

C. A "travel-trip camp" shall be known as a camp in which there is no permanent camp site and children move from one site to another. The travel-trip camp either originates in Colorado or moves into and/or through Colorado from another state and operates for three or more consecutive 24-hour days during one or more seasons of the year for the care of five or more children who are at least ten (10) years old or have completed the fourth grade. The program shall have as its purpose a group learning experience offering educational and recreational activities utilizing an outdoor environment.

D. The "Department" means the Colorado Department of Early Childhood.

~~7.711.11~~2.404 PURPOSE AND GOALS

Each camp must submit to the Department a statement of goals and objectives. This statement must be kept on file, updated periodically, made known to staff, and available for licensing inspection.

2.405~~7.711.12~~ GOVERNING BODY

The governing body must be identified by its legal name. The names and addresses of individuals who hold primary financial control and officers of the governing body must be disclosed fully to the Colorado Department of Human Services. The governing body is responsible for providing necessary facilities, adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules. When changes of governing body occur, the new governing body must immediately submit an original application and pay the required fee.

A. If the governing body lets, leases, or rents the licensed facility to any group or organization whose program falls under the definition as found at rule section 2.403(A)~~7.711.1~~, and verifies in writing to the ~~State~~ Department that the lessee meets the licensing standards, an application is not required of the lessee. If the governing body does not verify that the lessee meets the licensing standards, an application is required of the lessee and the license must be issued to the lessee before the camp opens.

B. When the facility is let, leased, or rented, the governing body must report the following in writing at the request of the ~~State~~ Department: name of the group, number and ages of children, length of time for use of the facility, and the purpose of the camp.

2.406~~7.711.13~~ FINANCIAL SUPPORT

The governing body must satisfy the Department upon request that there is sufficient financial support to operate and maintain a camp in accordance with these rules and camp goals and objectives.

2.407~~7.711.14~~ INSURANCES

Every facility must carry public liability insurance. The applicant or licensee must submit the amount of the insurance and the name and the address of the insurance agency providing the insurance to the camp. The camp must maintain information about the insurance at the campsite.

~~7.711.15~~2.408 WRITTEN AGREEMENTS, REPORTS, AND LOGS

A. There must be on file at the campsite an annually-dated a written or electronic agreement with a licensed physician or nearby health care facility to provide the necessary medical services for campers at the camp and medical help as a backup to the camp staff members responsible for health supervision.

B. A travel-trip camp is not required to have a written agreement, but it must have a list of all medical facilities in areas where the travel-trip camp will be traveling.

C. The camp must maintain at the campsite a medical record keeping system, listing name of camper, illness or injury, prescribed treatment and date the treatment was administered, and name of person administering care. This record keeping system must be available to licensing personnel.

D. The camp must submit as soon as possible but not longer than twenty-four (24) hours to the ~~State~~ Department a written report about any camper who has been separated from the group

outside of the supervision of their assigned staff member or for whom a report has been made to the local Sheriff's department for search and rescue. Such report must indicate the name, age, and address of the camper; the name of parents/guardians and their address if different; the date when the child was lost; the location, time, and circumstances when the camper was last seen; and circumstances of locating the camper.

~~7.711.2~~ PERSONNEL

~~7.711.21~~2.409 GENERAL REQUIREMENTS FOR ALL PERSONNEL

A. All paid employees at the camp less than 16 years of age must be employed in compliance with Colorado labor laws.

B. All counselors and staff members having a supervisory role with campers must be at least eighteen (18) years of age, or seventeen (17) years of age and graduated high school or completion of GED, and have interest in, respect for, and ability to work with children.

C. There must be a letter of agreement with each volunteer or employed staff member which includes listing of specific responsibilities/job description and referring to information contained in the hiring packet or staff manual. Days or hours of employment/time off, personal conduct, and health history questionnaire must be provided in writing or electronically and may be provided in the hiring packet or the staff manual. The letter of agreement must be signed by both the employer and the volunteer or staff member. In the case of staff members or volunteers who are younger than eighteen (18) years old, the letter of agreement must also be signed by the parents/guardians.

D. There must be at least three references for each staff member of the camp attesting to the individual's character and suitability to work with children. The written references must be in the personnel file or there must be an indication in the personnel file that a reference has been obtained.

E. Each staff member must complete an annual health history. The health history must be maintained in a secured location at the camp.

F. Each staff member must be trained and given written instructions as to camp policy when emergencies occur including but not limited to: lost campers, medical situations, hazardous wildlife and environmental hazards. In the case of travel trip or primitive camps, these plans must accompany the staff and campers.

~~7.711.22~~2.410 CAMP PERSONNEL

A. Each camp must have an onsite director who must be at least twenty-one (21) years of age. The director must have 12 months (1820 hours) verified leadership experience in an administrative or supervisory position, with groups of children five (5) years of age or older, since he or she attained the age of eighteen (18) years.

B. At each permanent camp there must be one health care worker who is responsible for monitoring the overall health of the campers and staff. A health care worker must be one of the following: a licensed physician, a registered nurse, a licensed practical nurse, a licensed physician's assistant, a certified nursing aide~~assistant~~ or an individual who holds current certification in emergency medical services. All health care workers must work within their scope of practice, including the ability to work independently or with required oversight.

1. At least one health care worker must be at the camp twenty-four (24) hours per day that the camp is in session.

2. If the camp health care worker is not a physician or registered nurse~~RN, a physician or RN currently~~ actively licensed by the Colorado Medical Board or State Board of Nursing~~in Colorado~~, must specifically delegate the camp staff member the authority to administer medications. The delegating physician or registered nurse~~RN~~ must be aware of the specific medical needs of campers, be available for consultation while the camp is in session, and accept responsibility for monitoring the therapeutic effects of medications administered at camp. Respiratory Therapists may administer medication within their scope of practice.

3. In order to administer medications all health care workers, except physicians and registered nurse~~RN~~s, must complete the Department-approved Medication Administration Training, receive delegation and hold current Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) Certification.

C. At any camps less than thirty (30) minutes from emergency medical services by vehicle, in clear weather, there must be at least one staff member with each group of children qualified with Department-approved First Aid, CPR, and Medication Administration Training and delegation.

D. All staff members must complete a Department-approved Standard Precautions training prior to working with children. This training must be renewed annually and may count towards ongoing training requirements.

E. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member with each group of children who holds current Department-approved First Aid and CPR for all ages of children. At any camp more than thirty (30) minutes away from emergency medical services, there must be at least one (1) staff member with each group of children qualified with a minimum of Wilderness First Aid Training, Department-approved CPR and Medication Administration Training. Staff members with Medication Administration Training must have annual delegation as required ~~at~~in rule section 2.410(B)(3)~~7.711.22.b.3~~.

F. There must be sufficient camp counselors or staff members who have a supervisory role with children at the camp to meet the staff ratio as indicated in rule section 2.411~~7.711.23~~. Children under the age of six (6) years who live at camp or are visiting must be directly supervised by a caregiver, who is not included in the staff to camper ratio, at all times when the children are involved in camp activities. Staff members whose children are under six (6) years of age cannot be supervising campers or leading special activities when they are supervising their own children.

G. If the camp has counselors-in-training who are not fully qualified, they must be directly accountable to a qualified counselor or specialized staff member and must be directly supervised by those individuals in their role when caring for children. The counselors-in-training who are less than eighteen (18) years old must not be counted as staff members in the maintenance of the staff ratio for supervision of children as found in~~at~~ rule section ~~7.711.23~~2.411.

H. There must be specialized staff members who are responsible for specific portions of the camp program. Requirements for those specialized staff members are found among the requirements for the specialized activity areas in~~at~~ the "Rules Regulating Special Activities," in rule section~~s 7.719~~2.600, *et seq*.

CHILD CARE

~~7.711.23~~2.411 SUPERVISION

A. The camp must have an accurate system whereby staff members who are responsible for the supervision of children must know where each child is at all times.

B. At no time may a camper be left without qualified supervision. Sleeping quarters of the counselors must be within sight or hearing distance of the sleeping quarters of the children whom they supervise. Children may sleep alone for specific program functions such as solos or survival experiences and then only when regularly monitored pursuant to the camp's written program. The camp's written program must include an audible mechanism for a camper to alert a staff member who is able to immediately respond.

C. Each special activity must be supervised by a staff member currently qualified in Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) training, and by the experience and training in that special activity as specified in the "Rules Regulating Special Activities," in rule sections ~~7.719~~2.600, *et seq*.

D. In a residential camp, ratio of one (1) staff member having a supervisory role with children per number of campers must be maintained at all times as follows:

Age of Children	Number of Children	Number of Staff Members
5 through 7 yrs. Old	6	1
8 through 10 yrs. Old	8	1
11 through 13 yrs. Old	10	1
14 yrs. And older	12	1

E. In a trip away from the residential camp premises or at the primitive camp, the staff ratio given ~~at~~in rule section 2.411(D)~~7.711.23, D~~, must be maintained, but there must be at least two staff members accompanying each trip, and one staff member must meet the qualifications as defined in rule section 2.410© and ©~~7.711.22.C, E~~. If the trip exceeds two nights, there must be with the group a staff member who is at least twenty-one (21) years of age, exercises good judgment, the ability to assume leadership independently and has been trained in trip leading procedures.

F. In a travel-trip camp, the staff ratio provided in~~given at~~ rule section 2.411(D)~~7.711.23.D~~ must be maintained, but there must be at least two (2) staff members at all times with the campers. One (1) of those staff members must be at least twenty-one (21) years old and one (1) staff member must meet qualifications of the health care worker as defined in rule section 2.410(B)~~7.711.22.B~~.

G. In the case of trips away from the permanent residential camp, including overnights or travel-trip camps, there must be a day-to-day itinerary prepared prior to departure. The resident camp headquarters must keep a copy of the itinerary. The itinerary must be followed as closely as possible. Camp headquarters must be notified of an itinerary change as soon as possible.

~~7.711.3 CHILD CARE~~

~~7.711.31~~2.412 HEALTH CARE

A. The camp health program must be under the supervision of an individual qualified as stated in~~at~~ rule section 2.410(B)~~7.711.22, B~~.

B. At least ten (10) calendar days prior to admission, each camper must furnish a health history which indicates communicable diseases and chronic illnesses or injuries the individual has had,

any known drug reactions and allergies, medications being taken, and any necessary health procedures or special diets.

C. The camp must inform its health care worker prior to the first day of care of the enrollment of a child with special health care needs, if known, to ensure staff receives training, delegation and supervision as indicated by the child's individualized health care plan.

D. The camper must present a statement confirming a physical examination, which has been performed within the preceding twenty-four (24) months from the first day of attendance at camp by a health care provider, which includes any physical problems which would limit the camper's activity, and any special care which the child will need.

E. The camper must submit documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Colorado law requires proof of immunization or exemption be provided prior to or on the first day of admission.

F. Upon arrival or within twenty-four (24) hours each camper must be observed, by camp staff trained to do so, to identify noticeable evidence of any illness, communicable disease, or signs of abuse. The camp health care worker must meet with campers that have special medications, health procedures, special diet restrictions, known allergic reactions, chronic health conditions or any known physical limitations.

G. The camp must provide evidence that the exclusion of a child that shows signs of illness or communicable disease is in compliance with the exclusion guidelines of the Colorado Department of Public Health and Environment (CDPHE). If a child needs to be excluded the camp must consult a doctor or medical facility as to the child's treatment.

H. If a camper requires medical attention away from the camp site, the camper's parents/guardians must be notified and necessary medical care must be sought from a health care provider or medical facility. Written authorization for medical care must be in the child's file pursuant to rule section 2.417~~7.711.61.A.9~~.

I. In the case of travel-trip camps, primitive camps, or tr~~am~~ips away from the camp, a copy of the statement which has been signed by the parent or guardian indicating that the camp staff may obtain emergency medical care must be in the possession of staff members accompanying the campers. The original signed statement must be readily accessible.

J. The camp health care worker must be responsible for administering medication to campers. If the health care worker is not a ~~currently~~ Colorado licensed registered nurse~~RN~~ or physician, the health care worker may only administer medication prescribed for individual campers as delegated and supervised by a~~n~~ registered nurse~~RN~~ or physician. Respiratory therapists may administer medication within their scope of practice.

1. Medication prescribed for campers must be from a licensed pharmacy; labeled with the name, address, and phone number of the pharmacy; name of the camper; name and strength of the medicine; directions for use; date filled; prescription number; and the name of the practitioner prescribing the medicine. When no longer needed or expired, the medication must be returned to the parent or disposed of properly.

A. When the camp has an on-site RN or physician, and campers are on excursions away from the camp, the RN or physician is responsible for determining a safe process for the administration of routine and emergency medications. This process should include:

i. The transfer of medications and associated documents from their usual storage place to portable storage for the trip.

ii. Labeling which includes camper''s name, medication, route, dosage, and time the medication should be administered as indicated on the original medication container.

iii. Secure and temperature appropriate storage during the trip.

iv. Hand hygiene during the trip.

v. Appropriate documentation practices during the trip.

vi. The return of medication and associated documents from portable storage for the field trip to their usual on-site storage.

b. If the camp does not have an on-site registered nurse~~RN~~ or physician, medications on trips must be in original labeled pharmacy containers

2. A record of any medications administered must be maintained in a medication administration record pursuant to rule section 2.408(C)~~7.711.15, D~~.

3. All medication at the permanent camp site must be kept in a clean, locked container, except emergency medication such as epinephrine auto injectors or asthma inhalers. On excursions away from the camp, medication must be under the control of an adult and must be stored inaccessible to children.

4. The camp may, with written parental consent and authorization of the prescribing practitioner, permit children who have asthma to carry their own inhalers and use them as directed. All staff must be aware of which children have asthma and which ones may use their own inhalers as needed.

5. Topical preparations such as petroleum jelly and bug sprays may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

6. Home remedies, including homeopathic medications, must not be administered at camp without written parental consent, authorization of the prescribing practitioner and delegation as required in rule section 2.410(B)~~7.711.22.b.3~~.

K. Standing orders for over the counter medications must be updated annually and are only allowed with parental permission and when administered by a physician or registered nurse~~RN~~.

L. First Aid supplies must be located near food service operations, program areas, maintenance areas, the headquarters of the medical supervisor, and in motor vehicles which are used to transport campers.

M. There must be an identified headquarters of the health care worker at the campsite.

N. Transportation must be available at all times in cases of medical emergency according to the written emergency medical evacuation plan of the camp.

O. To ensure the protection of campers from sun exposure the camp must:

1. Obtain the parent or guardian's written authorization and instructions for applying sunscreen or use of another form of parent or guardian approved sun protection to their children's exposed skin prior to going outside. A doctor's permission is not needed to use sunscreen at the camp;

2. Apply sunscreen, have campers apply sunscreen, or use another form of parent or guardian approved sun protection for campers prior to campers going outside. Sunscreen must be reapplied as directed by the product label;

3. When supplied for an individual camper, the sunscreen must be labeled with the camper's first and last name; and

4. If sunscreen is provided by the camp, parents must be notified in advance, in writing, of the type of sunscreen the camp will use.

~~7.711.32~~2.413 GUIDANCE

A. Guidance must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from the situation, talking with the child about the situation, or praise for appropriate behavior.

B. Children must not be subjected to physical harm, fear, or humiliation.

C. The program director must not use, or permit a staff member to use corporal punishment as defined in 22-1-140, C.R.S~~or other harsh punishment, including but not limited to pinching, shaking, spanking, punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of guidance~~.

D. Guidance must not be associated with food, rest, or toileting. Children should never be punished for toileting accidents. Children must not be denied food or forced to eat as a disciplinary measure.

E. Separation, when used as guidance, must not exceed five (5) minutes and must be appropriate for the child's age. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked or closed area.

F. Verbal abuse or derogatory remarks about the child are not permitted.

G. Authority for guidance must not be delegated to other children, and the camp must not sanction one child punishing another child.

~~7.711.33~~2.414 SECURITY PRACTICES

A. The camp must establish a written security procedure and must train staff members and campers regarding this procedure.

B. The camp must report to the local law enforcement office or department the dates of the camp sessions and the location of the camp.

C. When a camper is discharged from camp or when the camp session is over, the child must be returned to the parents/guardians or an adult authorized by the parents/guardians. If the individual is unknown to the staff, identification must be required.

~~7.711.34~~2.415 FOOD AND NUTRITION

A. Each camp must establish a written policy for its nutrition and food service program. This policy must include meal hours, type of food service, staff responsibilities during the time food is served, authorization of special diets, and the administration of the food service program. This policy must be available to all staff members.

B. Foods provided by the camp must be of sufficient quantity and nutritional quality to provide for the dietary needs of each child. Menus must meet the most recently revised recommended daily allowances of the Food and Nutrition Board, National Academy of Sciences, National Research Council, adjusted for age, sex, religion, and activity. The only exception must be by written parental or medical direction.

C. Menus must be planned at least a week in advance and must be dated as to the week in use. The current week's menu must be posted in the food preparation area. Food substitutions must be noted on the menus in writing. After use, the menus must be kept on file for the period of the camping season.

D. In travel-trip camps, all menus must be planned prior to leaving and changes noted in writing. Menus must be maintained in file of camp.

~~7.711.35~~2.416 TRANSPORTATION

A. Transportation provided by the camp must meet the following requirements:

1. The camp is responsible for any children it transports;

2. The camp must obtain written permission from parents or guardians for any transportation of their child during camp hours;

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found in~~at~~ rule section 2.411~~7.711.23~~. The driver of the vehicle is considered a staff member;

4. The camp must not permit children under the age of eight (8) or children under 57" tall to ride in the front seat of a passenger vehicle. Children under 8 must be secured in a child restraint system that is appropriate for the age and development of that child. The child restraint must be safe and free of hazard;

5. Campers must be loaded and unloaded out of the path of moving vehicles;

6. Campers must not be left unattended in the vehicle;

7. For trips away from the camp, a list of individuals on each trip must be readily available either in the vehicle(s) or at the camp office.

B. Requirements for vehicles

1. Any vehicle used for the transportation of children to and from the camp or during camp activities must meet the following requirements:

a. The vehicle must be enclosed and have door locks;

b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must be operational, safe and free of hazard;

d. Seating must be comfortable with a seat of at least ten (10) inches wide for each child;

e. Vehicles must be loaded only within the passenger seating limit established by the vehicle manufacturer; and

f. Each vehicle must have a first aid kit.

2. In passenger vehicles, with a manufacturer''s established capacity of sixteen (16) or fewer passengers and less than 10,000 pounds, the following is required:

a. Each camper and staff member must be restrained in an individual seat belt; and

b. Campers and staff must be instructed and required to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer''s established capacity of sixteen (16) or more passengers, seat belts for passengers are not required.

C. Requirements for drivers of vehicles

1. All drivers of vehicles transporting children must operate the vehicle is a safe and appropriate manner.

2. The camp must verify that all drivers meet minimum requirements, including:

a. Driving records that have been reviewed within the last four months for seasonally hired drivers or within the last twelve months for year-round drivers to determine driver suitability;

b. Drivers have the appropriate license for the vehicles to be driven;

c. Drivers must have current Department-approved first aid and cardiopulmonary resuscitation (CPR) certification;

d. All drivers must be at least twenty (20) years of age;

e. Drivers must complete a minimum of four (4) hours of driver training that includes at a minimum: behind the wheel training; participant transport attendance procedures including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedure; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and, if buses are used, evacuation procedures;

3. The driver must ensure that all doors are secured at all times when the vehicle is moving;

4. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip; and

5. The driver must not eat or use a cellular or other mobile device while driving.

~~7.711.4~~ RECORDS FOR CHILDREN AND PERSONNEL

~~7.711.41~~2.417 CHILDREN'S RECORDS

A. Prior to the child's attendance at camp, the following information must be obtained and maintained at the campsite for each camper:

1. Child's name, birth date, and address.

2. Parent's or guardian's names, home and employment addresses, telephone numbers, and email addresses.

3. Name, address and telephone number of emergency contacts.

4. Name, address, and telephone number of individuals authorized to take the child from camp if different from the parent or guardian.

5. Dates of the camp session which the child will attend.

6. Name and telephone number of the child's health care provider.

7. Authorization signed by the parents/guardians, giving authority for the camp to obtain emergency medical care.

8. Authorization signed by the parents/guardians of the child to participate in all special trips or excursions away from the campsite.

9. Indication of any camp activity in which the parents/guardians of the child does not wish the child to participate (see the Rules Regulating Special Activities, in rule sections 2.600~~7.719~~, *et seq*.).

10. Physical examination, health history and immunization as required in rule section 2.412~~7.711.51.C-D~~.

~~7.711.42~~2.418 STAFF RECORDS

There must be maintained at the campsite a record for each staff member, paid or volunteer, which must include the following:

A. Name, address, and birth date of the individual.

B. Training, education, and experience of the staff member.

C. Copies of any required certification or other training confirming qualifications for the responsibilities assigned at the camp.

D. Copy of a health history as required in rule section 2.409(E)~~7.711.21.E~~.

E. Name, address, and telephone number of any person(s) to be notified in the event of an emergency.

F. Copy of the written references or note of phone references pursuant to rule section 2.409(D)~~7.711.21.D~~.

G. Copy of the signed letter of agreement pursuant to rule section 2.409(C)~~7.711.21.C~~.

H. The dates of employment for each staff member.

~~7.711.43~~2.419 GENERAL INFORMATION

A. The camper's file must be retained by the camp for at least three (3) years after the child's last day of attendance at the camp, and must be available without restriction to Department.

B. Personnel and children's records must be maintained by the camp for at least three (3) years. If the record reflects an accident, injury, or other unusual circumstance, it is suggested that the record be maintained for a longer period of time.

~~7.711.5~~ CAMPSITE, PHYSICAL FACILITY, FIRE SAFETY AND SANITATION

~~7.711.51~~2.420 CAMPSITES

A. Travel-trip camps must submit plans for approval by the Colorado Department of Public Health and Environment, thirty (30) days prior to the date the trip camp begins. The travel-trip camp must maintain written evidence of Colorado Department of Public Health and Environment approval.

B. The camp must conform to fire prevention and protection requirements of local fire departments in the locality of the camp. In the case of a travel-trip camp, the fire department approval is not required.

C. The camp must identify hazards and high-risk areas and develop policies they follow to prevent unauthorized access to these hazards and high-risk areas.

D. Each camp must have a telephone or means of communication to contact emergency services.

E. Emergency telephone numbers must be posted the camp health care professional, nearest clinic or hospital, ambulance service, local sheriff's office, national or state forest service office (as appropriate), fire department or lookout station, and poison control center.

F. In the case of a primitive camp or travel-trip camp, sources of emergency care and methods of communication with such facilities as hospitals, police, and forest service must be identified for each campsite on the itinerary.

G. When playground equipment is provided at a residential camp, the equipment and playground area must be free of obstruction and man-made or natural hazards and must be away from natural pathways of traffic.

H. Playground equipment must meet the following requirements:

1. Be in good repair, of solid and safe construction, free of rough edges, protruding bolts, and the possibility of entrapment of extremities.

2. Be securely anchored by suitable footing.

3. Swings must have seats made of a flexible material.

4. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

5. Metal equipment must be placed in the shade or a shade structure must be provided.

6. The maximum height of any piece of playground equipment is six (6) feet.

7. All pieces of playground equipment must be designed to guard against entrapment and strangulation.

8. All pieces of permanently installed playground equipment must be surrounded by a resilient surface of a depth of at least six (6) inches. Rubber mats manufactured for such use if safe and free from hazard may be used in place of resilient material.

9. Department-approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, shredded rubber tires, and fine loose sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and astro turf with built in resilient pad.

10. Any permanently installed outdoor climbing equipment or portable climbing equipment eighteen (18) inches or higher must have Department-approved resilient surfacing underneath and in the use zone surrounding the equipment, and installed according to manufacturer instructions.

11. Playground surfaces must be checked prior to use for the presence of dangerous or other foreign materials. Playground equipment must be checked for safety on a monthly basis and written documentation of the safety check must be maintained.

I. If the residential camp is located on or uses national or state lands, the director must familiarize the staff and campers with rules and ethics governing the use of such property and must be responsible for compliance.

J. An itinerary must be filed or an arrangement must be made with national or state forest service office if such land is to be used by the travel-trip camp. The director must familiarize the staff and campers with rules governing the use of such property. Should the travel-trip camp pass onto private land, an agreement must be made with the individual responsible for that land prior to access.

K. In indoor structures where the program uses any source of coal, wood, charcoal, oil, kerosene, propane, natural gas or any other product that can produce carbon monoxide indoors, an operational carbon monoxide detector must be installed according to the manufacturer's instructions. Carbon monoxide detectors must be tested at least annually with documentation available upon request. Carbon monoxide detectors that are only battery-powered must meet the following requirements:

1. Tested monthly to ensure they are operational; and~~.~~

2. Batteries changed at least yearly.

~~7.711.52~~2.421 PERMANENT AND SEMI-PERMANENT SHELTERS AND SLEEPING FACILITIES

A. All structures used by children must be kept in good repair at all times.

B. At least one-half of the floor area in each living unit, excluding tents, must have a minimum ceiling height of seven (7) feet. No portion of a room having a ceiling height of less than five (5) feet will be considered as usable floor space.

C. If fabric structures are used they must be constructed of a fire- and flame-retardant material.

D. Each camper must be provided with his or her own mat, pad, bed, or cot.

E. The aisles between rows of cots, beds, or bunks must be kept clear for exiting purposes. There must be at least two (2) feet of clear space separating sides of cots, beds or bunks.

F. If bunk beds are in use, no bunks may contain more than two tiers of beds. There must be at least twenty-seven (27) inches of clear space separating the tiers of beds and thirty-six (36) inches of clear space between the top tier and the ceiling. Electric lights which are within reach of the top bunk must be protected.

G. Each permanent sleeping unit, building, or tent must have at least thirty (30) square feet of floor space per person, camper, or counselor for single-tier beds and twenty (20) square feet per person, camper, or counselor for two-tier bunks.

H. In tent structures which have a platform floor, beds or bunks must be arranged in such a fashion that no camper who might fall from a bed or bunk could fall through the sides of the tent to the ground below.

I. No camper shall sleep in the same room or tent with any person of the opposite gender, except for members of his or her immediate family.

J. In a primitive camp or travel-trip camp, adequate shelters such as a tent must be available for each child. The shelter occupancy must be in compliance with manufacturers' recommendations.

~~7.711.53~~2.422 TOILET AND BATHING FACILITIES

A. In a resident camp there must be one approved toilet for every twenty (20) or fewer campers for which the camp is licensed. Urinals may be substituted for no more than one-third of the required toilets.

B. Children must be allowed the use of gender-segregated toilet facilities that are consistent with their gender identity or have individual toilet facilities.

C. Hand washing facilities must be provided throughout the camp. There must be one basin or lavatory for per every twenty (20) campers. In new construction completed after April 1, 2018, change of governing body or extensive remodeling the camp must provide hand washing facilities located adjacent to where the camp serves meals.

D. Showers or bathtubs must be located within buildings used for sleeping, such as cabins or dormitories, or in a centrally located shower or bathing structure.

1. There must be one shower head or bathtub per every twenty (20) campers for which the camp is licensed.

2. Hand washing facilities must be available in the shower or bathing area.

E. Camps must provide evidence that all sewage disposable systems must meet Colorado Department of Public Health and Environment (CDPHE) requirements.

~~7.711.54~~2.423 GENERAL BUILDING SAFETY

A. Every building, structure, tent, cabin, and camp premises must be kept in good repair, and must be maintained in a safe condition.

B. All construction and electrical installations must be safe and free from hazard.

C. In permanent structures, exit signs must be posted at every required exit doorway and wherever otherwise required to clearly indicate the directions of egress.

D. A building with occupancy of more than twelve (12) persons must be provided with at least two independent means of egress separated by no less than fifty (50) percent of the largest dimension of the building from each other.

1. In an existing building, such as a cabin occupied by more than twelve (12) but less than twenty (20) persons, a window may be utilized as an acceptable second exit. The window must be openable and the distance from the window to the ground must not be more than four feet.

2. Each exit door must be hung to swing in the direction of exit travel. Exiting through a food preparation area is not permitted.

E. If buildings with second stories are used by campers, there must be two independent means of egress separated by no less than fifty (50) percent of the building from each other per floor.

F. The camp must provide evidence each fire escape from any upper level of a building is installed in accordance with local fire protection ordinances.

G. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building can be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

H. Exit doors must be equipped only with panic or single-action hardware.

I. There must be fifteen (15) square feet per occupant in any room having an occupant load of more than fifty (50) persons where fixed seats are not installed and which is used for classroom, assembly, or similar purposes. The maximum occupancy must be posted in a conspicuous place near the main exit from the room.

J. Furnaces, fireplaces, heaters, or wood-burning stoves must meet the following regulations:

1. All heating units must be and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them.

2. A heater or wood-burning stove must be located and/or protected in such a manner as to prevent injuries to occupants of the building.

3. Wood-burning stoves must be regularly cleaned of ashes, which are immediately removed from the building and properly stored.

4. Space around furnaces, heaters, and wood-burning stoves must not be used for storage.

K. All firearms must be locked and inaccessible to children. This includes, but is not limited to air rifles, bb guns, and paintball guns. Ammunition must be locked and stored separately.

L. Power tools, explosives and special equipment involving unusual risk must be stored in a locked place inaccessible to children, and must always be under the custody and direct supervision of authorized personnel when in use.

M. Volatile substances such as gasoline, kerosene, fuel oil, and oil- based paints, firearms, explosives, and other hazardous items must not be stored in any area of the building used for children unless approved by the local fire department.

N. Substances which may be toxic to a child if ingested, inhaled, or handled, including, but not limited to, poisons, drugs, medicines, insecticides, herbicides, rodenticides, bleaches, chemicals, and corrosive agents must be stored in a cabinet or enclosure located in an area not used by children, stored in the original container, and properly labeled.

O. Glass doors, walls, or panels must be clearly marked. Safety glass must be installed when required.

P. Stairways of a height of more than thirty (30) inches must be equipped with handrails on each side of the stairways. A stairway which is larger than eighty-eight (88) inches wide must have an intermediate handrail equal distance between the two handrails.

Q. All window wells and outside stairwells that are hazardous to children must be equipped with screens or guards, which must be attached in such a manner that they may either by removed from the inside or broken in from the outside in case of fire.

R. All areas accessible to children must be maintained in a safe condition by removal of debris, dilapidated structures, and broken or worn equipment or dangerous items.

~~7.711.55~~2.424 FIRE SAFETY PROVISIONS

A. Any fire extinguisher used at the camp must be of a dry chemical type, hung at a level readily available to staff members, and annually inspected by an approved inspector. Indian pump backpack fire extinguishers and fire extinguishers approved for use by the U.S. Forest Services are also acceptable.

1. There must be a fire extinguisher located in the camp kitchen.

2. In each building and/or structure, there must be a fire extinguisher on each floor.

3. In tent areas, there must be a fire extinguisher located within seventy-five (75) feet of each tent or a plan approved by the Department.

B. In each camp there must be a fire alarm(s) must sounds a separate and distinctly recognizable tone from all other signaling devices used by the camp. The alarm(s) must be audible throughout the occupied camp premises. The alarm device, once activated, must continue to sound automatically.

C. Within twenty-four (24) hours after arrival at the campsite, all individuals attending the camp must be made familiar with the methods by which the fire alarm may be activated and with procedures to be followed upon notification of fire.

D. Each separate building used for sleeping campers and each multistory building must be protected by a smoke detector on each floor of the building.

E. Areas used for campfires must be cleared and must be away from overhanging branches.

F. Campfires must never be left unattended and must be thoroughly extinguished. Extinguishing equipment must immediately accessible.

G. Campfires and open flames of any type must be prohibited within ten (10) feet of any tent or fabric structure.

RULES REGULATING SCHOOL AGED CHILD CARE PROGRAMS

2.500 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 et seq. (the "APA"), C.R.S.; the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 et seq. (the "Early Childhood Act"), C.R.S.; the Child Care Licensing Act, sections 26.5-5-301, et seq., C.R.S.; the Child Care Licensing Act, sections 26.5-5-301, et seq., C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.

The specific rulemaking authorities granted for the School Age Programs include sections XXX, C.R.S.

2.501 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities These rules and regulations shall govern the health and safety requirements of licensed school-age programs in Colorado. All School-Age Child Care Centers must comply with the "General Rules for Child Care Facilities" in rule section 2.100, "Rules Regulating School-Age Child Care Centers" in rule section 2.500, and the "Rules Regulating Special Activities" in rule section 2.600.

2.502 APPLICABILITY

The provisions of these rules and regulations shall be applicable to Licensed School-Age Programs caring for five (5) or more children with or without compensation.

~~7.712 RULES REGULATING SCHOOL-AGE CHILD CARE CENTERS~~

~~All school-age child care centers must comply with the "General Rules for Child Care Facilities" as well as the "Rules Regulating School-Age Child Care Centers"~~

~~7.712.1 (None)~~

2.503~~7.712.2~~ DEFINITIONS

A. A "school-age child care center" (hereafter referred to as the "center") is a child care center that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. Children four (4) years of age, who will turn five (5) on or before October 15th of the current calendar year may attend the center as part of a "building-based school-age child care program" or "building-based day camp" summer program prior to their kindergarten year. The center operates for more than one week during the year. The term includes facilities commonly known as "day camps," "summer camps," "summer playground programs," "before and after school programs," and "extended day programs." This includes centers operating with or without compensation for such care, and with or without stated educational purposes.

B. A "building-based school-age child care program" is a child care program that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. The center is located in a building that is regularly used for the care of children.

C. A "day camp" is a school-age child care program which operates at least four (4) hours a day primarily during one season of the year, and during school vacation periods for children between five (5) and eighteen (18) years of age, which accepts registrations for finite, not necessarily contiguous sessions. Programs may operate daily between 6:00 a.m. and 10:00 p.m. Day camp programs may offer no more than two overnight stays each camp session.

The types of day camps are as follows:

1. A "building based day camp" is a child care program that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. The day camp is located in a building which, along with the outdoor surroundings, is regularly used by the program.

2. A "mobile day camp" is a child care program that provides programming for five (5) or more children who are at least seven (7) years of age or who have completed the first grade. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis. Mobile day camp programs may operate in multiple sites, in a single county, under one license.

3. An "outdoor-based day camp" is a child care program that provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade. The day camp does not use a permanent building on a regular basis and provides programming in a permanent outdoor or park setting.

~~7.712.3~~ POLICIES AND PROCEDURES

2.504~~7.712.31~~ STATEMENT OF POLICIES AND PROCEDURES

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures. Policies must include the following:

1. The center's purpose and its philosophy on child care;

2. The ages of children accepted;

3. Services offered for special needs children in compliance with the Americans with Disabilities Act (see rule section 2.115~~7.701.14,~~ of the General Rules for Child Care Facilities);

4. The hours and dates when the center is in operation, specific hours during which special activities are offered, and holidays when the center is closed;

5. The policy regarding inclement weather;

6. The procedure concerning admission and enrollment of children;

7. An itemized fee schedule;

8. The procedure to ensure the location of children is known at all times, how children are accounted for throughout the day, and that children are supervised at all times by their assigned staff member;

9. The center's procedure on guidance, positive instruction, supporting positive behavior, discipline and consequences, including how the center will:

   a. Cultivate positive child, staff and family relationships;

   b. Create and maintain a socially and emotionally respectful early learning and care environment;

   c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

   d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and

   e. Access an early childhood mental health consultant or other specialist as needed.

10. The procedure for handling children's illnesses, accidents, and injuries, including when children will be excluded from care and notification of parents/guardians;

11. The procedures followed when it has been identified a child is separated from their group and not under the direct supervision of their assigned staff member.

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

13. The written policy and procedure governing field trips, television and video viewing, and special activities, including the staff's role for the supervision of children;

14. The procedure on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

15. The procedure for releasing children from the center only to persons for whom the center has written authorization;

16. The procedures followed when a child is picked up from the center after the closing hours of the center or not picked up at all, and the procedure to ensure that all children are picked up before the staff leave for the day;

17. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

18. The procedure for storing and administering children's medicines and delegation of medication administration in compliance with section 12-255-131~~12-38-132~~, C.R.S., of the "Nurse and Nurse Aide Practice Act~~Nurse Practice Act.~~";

19. The procedure concerning children's personal belongings and money;

20. The policy concerning meals and snacks;

21. The policy and procedure regarding visitors;

22. The procedure for filing a complaint about child care including the name, address and telephone number of the Colorado Department of Early Childhood (see rule section 2.121~~7.701.5.~~ of the General Rules for Child Care Facilities);

23. The procedure for~~regarding the~~ reporting ~~of suspected or known~~ child abuse and/or neglect, including the name of the county department of social/ human services and phone number of where a child abuse report should be made (see section ~~7.701.5~~2.120 of the General Rules for Child Care Facilities);

24. The policy for notification when child care service is withdrawn by the program, or when parents or guardians withdraw their child(ren) from the center;

25. The procedure, if applicable, for transitioning children between school or community sponsored activities; and

26. The policy on the steps the center will take prior to the suspension, expulsion or request to parents/guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior.

~~7.712.32~~2.505 COMMUNICATION, EMERGENCY, AND SECURITY PROCEDURES

A. The center must notify the parents/guardians in writing of significant changes in its services, policies, or procedures so that they can decide whether the center continues to meet the needs of the child(ren).

B. For security purposes, a daily sign-in/sign-out sheet or other mechanism for parents/guardians must be maintained by the center it must include, for each child in care, the date, the child's name, the time when the child arrived and left the center, and the parent/guardian's signature or other identifier. With a parent/guardian's approval, a child five (5) years of age or older may sign in and out instead of the parent/guardian. Staff must verify attendance periodically throughout the day.

C. During the hours the center is in operation, the center must provide an office and/or monitored telephone number known to the public and available to parents/guardians in order to provide immediate access to the center.

D. If the center has a permanent site, there must be a telephone at the site.

E. Emergency telephone numbers must be posted at each permanent site and taken on all field trips and during mobile school-age child care programs. The emergency numbers must include, at a minimum, 911, or a rescue unit if 911 isn't available; the clinic or hospital nearest to the activity location; ambulance service; fire, police, and health departments; and Rocky Mountain Poison Control.

F. Mobile school-age child care programs must have a way to be contacted while in transit.

G. The center must be able to provide emergency transportation to a health care facility at all times either via program vehicle or the emergency medical services system.

H. The director of the center or the director's delegated substitute must have a means for determining who is present at the center at all times.

I. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes, at a minimum, the visitor's name and address and the purpose of the visit. At least one piece of identification must be inspected for individuals who are strangers to personnel at the center.

J. With the exception of children who are allowed to sign themselves in and out, the center must release a child only to the adult(s) for whom written authorization has been given and is maintained in the child's record (see rule section ~~7.712.81~~2.524). In an emergency, the child(ren) may also be released to an adult for whom the child's parent or guardian has given verbal authorization. If the staff member who releases the child does not know the adult, identification must be required to assure that the adult is authorized to pick up the child.

K. The center must have a procedure for dealing with individuals not authorized by the parent/guardian of a child who attempts to have the child released to them.

L. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up.

~~7.712.4~~ PERSONNEL

~~7.712.41~~2.506 GENERAL REQUIREMENTS FOR ALL PERSONNEL

A. All personnel and volunteers at the center must demonstrate knowledgeable decision-making, judgment, and concern for the proper care and well-being of children.

B. All personnel and volunteers must not engage in actions that would endanger the health, safety, or well-being of children.

~~C. A criminal record check request for all staff must be submitted to the Colorado Bureau of Investigation. The personnel file of staff members of the center must contain clearance report from the Colorado Bureau of Investigation. The requirement for a criminal record check is found in Section 7.701.33 of the General Rules for Child Care Facilities. Seasonal staff that indicates that they will not be returning to the program for employment must be removed from the CBI list for the program.~~

C~~D~~. Each staff member and regular volunteer as defined in rule section 2.509~~7.712.44.C~~ must complete an annual health history. The health history must be maintained in a secure location.

D~~E~~. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

E~~F~~. Prior to working with children, the staff member must read and be instructed on the policies and procedures of the center, including those relating to hygiene, sanitation, food preparation practices, proper supervision of children, and reporting of child abuse. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

F~~G~~. Day camp staff must receive a minimum of fifteen (15) hours of pre-camp training, in addition to Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) training. Pre-camp

training must include all training activities that staff members participate in as a whole. Training should include, but not be limited to, familiarizing staff with the camp mission, site emergency policy and procedures, how to supervise and facilitate activities with campers, and health care policies and procedures. Policies and procedures must be in writing. Staff will be supervised and additional training may be provided if needed. Day camps must have a system in place to provide staff the essential training information for late hires.

GH. The center must have a staff development plan that includes a minimum of fifteen (15) clock hours of ongoing training each year for all staff. This requirement does not apply to day camps. At least three (3) clock hours per year must be in the focus of social emotional development. The fifteen (15) clock hours of training does not include recertification in First Aid and CPR. Ongoing training and courses must demonstrate a direct connection to one or more of the following competency areas:

1. Child growth and development, and learning or courses that align with the competency domains of child growth and development;

2. Child observation and assessment;

3. Family and community partnership;

4. Guidance;

5. Health, safety and nutrition;

6. Professional development and leadership;

7. Program planning and development; and

8. Teaching practices:

   a. Each one (1) semester hour course with a direct connection to the competency area listed in rule section 2.507(G)~~7.712.41, j, 1-8~~, taken at a regionally accredited college or university may count as fifteen (15) clock hours of ongoing training.

   b. Training hours completed can only be counted during the year taken and cannot be carried over.

HI. To be counted for ongoing training, the training certificate must have documentation that includes:

1. The title of the training; ~~and,~~

2. The competency domain; ~~and,~~

3. The date and clock hours of the training; ~~and,~~

4. The name or signature, or other approved method of verifying the identity of trainer or entity; ~~and,~~

5. Expiration of training if applicable; and~~,~~

6. Connection to social emotional focus if applicable.

~~I~~J. All staff members must complete a Department-approved standard precautions training prior to working with children. This training must be renewed annually and may count towards ongoing training requirements.

J~~K~~. All staff members must complete a building and physical premises safety training prior to working with children. The training must include:

a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic; and

b. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants.

K~~L~~. All staff member responsible for the collection, review and maintenance of the child immunizations records must show evidence they have completed the Colorado Department of Public Health and Environment (CDPHE) immunization course within (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

L~~M~~. All staff members and regular volunteers must complete a Department-approved training about child abuse prevention, including common symptoms and signs of child abuse within (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

M. All staff must have at least one (1) hour of child development training within ninety (90) days of employment. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This training is required once and will count toward ongoing training requirements if taken after the date of hire.

N. Prior to working with children, each staff member must read and be trained on the Centers Policies and procedures for the administration of medications. Staff members must sign a statement indicating that they have read and have been trained on the center's administration of medications policies and procedures.

2.507~~7.712.42~~ REQUIRED PERSONNEL AND QUALIFICATIONS

A. Program Director

Each center must have an on-site program director who must be at least twenty-one (21) years of age. The program director must have demonstrated to the hiring authority maturity of judgment, administrative ability and the skill to appropriately supervise and direct school-age children in an unstructured setting.

1. The program director must have verifiable education or training in work with school-age children in such areas as recreation, education, scouting or 4-H; and the program director must have completed at least one of the following qualifications:

a. A four (4) year college degree with a major such as recreation, outdoor education, education with a specialty in art, elementary or early childhood education, or a subject in the human service field; ~~or~~

b. Two years of college training and six (6) months (910 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

c. Three years (5,460 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience and one of the following qualifications:

1) Complete six semester hours, or nine quarter hours in course work from a regionally accredited college or university; or

2) 40 clock hours of training in course work applicable to school-age children and the Department-approved courses in injury prevention, and playground safety for School-Aged Child Care Centers within the first nine months of employment.

2. Satisfactory experience includes experience in the care and supervision of four or more children from the ages of four (4) to- eighteen (18) years old, unrelated to the individual, since attaining the age of eighteen (18).

3. The program director is responsible for planning and implementing the program and supervising the staff.

B. Program Leaders

Each program leader must be at least 18 years of age, demonstrate ability to work with children, and must meet the following qualifications:

1. Complete the Department-approved course in injury prevention;

2. Complete the Department-approved course in playground safety for School-Aged Child Care Centers. This requirement does not apply to day camps that do not regularly use a playground.; and

3. Must have at least three (3) months (460 hours) of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

C. Program Aides

1. Program aides must be at least sixteen (16) years of age. Program aides must work directly under the supervision of the program director or program leaders and must never be left alone with children.

2. Program aides can be counted as staff in determining child care staff ratios.

D. Department-approved Child Care Health Consultant

1. As required by these rules, staff must consult with a current Department-approved Colorado Child Care Health Consultant. To be approved the Child Care Health Consultant must be one of the following: a licensed registered nurse with knowledge and experience in maternal and child health, a pediatric nurse practitioner, a family nurse practitioner, or a pediatrician. The consultation must be specific to the needs of the facility and include some of the following topics: training, delegation and supervision of medication administration and special health procedures, health care, hygiene, disease prevention, equipment safety, interaction between children and adult caregivers, and normal growth and development. Consultation must occur as often as the child care health consultant who is delegating medications and/or medical procedures requires.

2. The date and content of each consultation must be recorded and maintained in the center''s files.

3. The center must maintain documentation including the child care health consultant's (CCHC) Department of Regulatory Agencies (DORA) proof of active licensure in good standing, by the Colorado Medical Board or State Board of Nursing as a physician or registered nurse~~RN or MD current licensure in good standing~~, a brief biography highlighting applicable knowledge, experience and approximate dates worked as a school nurse or Child Care health Consultant commenced.

4. Child care health consultants (CCHC) must complete the Department-approved child care health consultant (CCHC) training prior to consulting with the center. The center must obtain and maintain proof of course completion.

5. All Child Care Health Consultants (CCHC) must show evidence they have completed the Colorado Department of Public Health and Environment (CDPHE) immunization course annually.

E. Employment of maintenance staff, including kitchen service, grounds, and housekeeping employees less than sixteen (16) years of age, must be in compliance with Colorado labor laws.

F. At least one staff member with current Department-approved medication administration training and delegation must be on duty at all times.

G. First Aid and Cardiopulmonary Resuscitation (CPR) Certified Staff

1. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member who holds current Department-approved First Aid and CPR certificate for all ages of children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location.

2. In a day camp, all staff members who are eighteen (18) years of age and older must have current Department-approved First Aid and CPR certificates. Uncertified staff members must work with another certified staff member.

3. All employees caring for children, not required by rule to be certified in First Aid and CPR, must complete a Department-approved basic First Aid and CPR module within thirty (30) calendar days of employment and the module must be renewed every two (2) years.

~~7.712.432~~.508 REQUIRED STAFF SUPERVISION

A. A program director must be present at the center at least 60 percent of any day the center is in operation. An individual who meets one of the following requirements must be present for the remaining 40 percent of the day:

1. A qualified program leader who is at least twenty-one (21) years of age; ~~OR~~

2. A qualified program leader who is at least eighteen (18) years of age and has at least one (1) year (1820 hours) full-time or equivalent part-time verifiable experience working with children; or

3. Two qualified program leaders who are at least nineteen (19) years of age.

B. If the program director cannot be present 60 percent of any day the center is in operation, an individual who meets program director qualifications must substitute for the director.

C. There must be at least one (1) program leader providing supervision with each group of thirty (30) or fewer children cared for by the center. When four (4) year olds are in attendance, there must be at least one program leader providing supervision with each group of twenty-four (24) or fewer children cared for by the center.

D. The maximum group size for children over the age of five (5) is thirty (30) children. When four (4) year olds are in attendance the maximum group size is twenty-four (24). When the center has the capacity to care for multiple groups of children, they must be separated into developmentally and age appropriate activities. Groups are not required to be separated from each other by permanent or portable dividers or walls.

E. Group size for children in care may be exceeded for attendance time, meal and snack time, special occasions and activities. The room capacity must not be exceeded.

F. There must be one (1) staff member for each fifteen (15) children in attendance. When four (4) year olds are in attendance, there must be at least one staff member for each twelve (12) or fewer children cared for by the center.

Ages of Children	Number of Staff	Maximum Group Size
Mixed age group with 4 year olds	1 staff member to 12 children	24 children
5 years and older	1 staff member to 15 children	30 children

G. At any time when nine (9) or more children are in care at the center, there must be at least one (1) program leader actively supervising children and another responsible person at least sixteen (16) years of age on the premises. When eight (8) or fewer children are present, there must be at least one (1) program leader on duty and a second staff member on call who is immediately available in an emergency.

H. At all times, school-age child care personnel must be directly supervising the children.

I. In a mobile day camp program, an outdoor-based day camp program, or anytime a building based program is away from the facility, the staff ratio given in rule~~at~~ section 2.508~~7.712.43~~ must be maintained, but there must be at least two (2) program leaders at all times with the children.

2.509~~7.712.44~~ VOLUNTEERS

A. If volunteers are used by the center, there must be a clearly established policy in regard to their function, orientation, and supervision.

B. References must be obtained for volunteers who are counted in the staff to child ratio, consistent with rule section 2.116(B)~~7.701.33B~~ of the General Rules for Child Care Facilities.

C. Volunteers that work more than fourteen (14) calendar days (112 hours) per calendar year who are used to meet staff to child ratio must be equally qualified as a program director, program leader or program aide and must have complete staff records as defined in rule section 2.525~~7.712.82~~.

D. Volunteers unless equally qualified must be directly supervised by a program director or program leader.

E. Volunteers must be given instruction as to the centers policies and procedures.

~~7.712.5~~ CHILD CARE SERVICES

~~7.712.51~~2.510 ADMISSION PROCEDURE

A. The center can accept children only of the ages and capacity for which it has been licensed.

B. Admission procedures must be completed prior to the child's first day in care at the center and must include:

1. Completion of the registration information for inclusion in the child's record, as required in rule section 2.524~~7.712.81~~; and

2. Providing the parent(s)/guardian(s) with a copy of the center's policies and procedures.

2.511~~7.712.52~~ HEALTH CARE

A. Statements of Health Status

1. At the time of enrollment, the parent(s)/guardian(s) must provide for each child entering the center:

a. A complete health history for each child, including any communicable diseases, chronic illnesses or injuries, known drug reactions and allergies, current medications and any special diets needed, the name address and phone number for the child's health care provider and dentist.

b. Documentation of school-required immunization status or Certificate of Medical or Nonmedical Exemption, is required by the Colorado Board of Health. Up-to-date school-required immunizations must be documented as specified on the Colorado Department of Public Health and Environment Certificate of Immunization or on an "approved alternate" Certificate of Immunization. Colorado law requires proof of immunization status or exemption be provided prior to or on the first day of admis"ion.

1) If the parent or legal guardian of a child wishes a nonmedical exemption from the requirement for immunizations due to a religious belief whose teachings are opposed to immunizations or a personal belief that is opposed to immunizations, the child's parent, or legal guardian must:

a) Submit the Certificate of nonmedical exemption with a signature from an immunizing provider in Colorado, or

b) Submit the Certificate of Nonmedical Exemption received upon the completion of Colorado Department of Public Health and Environment Online Immunization Education Module.~~b. Documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Colorado law requires proof of immunization be provided prior to or on the first day of admission.~~

2.~~1~~) Child care centers as defined in sections 26.5-5-303(10) and 26.5-5-307~~26-6-102 (1.5)~~, C.R.S., located at a ski area, are exempt from obtaining immunization records for students when all of the following conditions are met:

a.~~)~~ Students attend for fifteen (15) days or less in a fifteen-consecutive-day period, no more than twice in a calendar year; and

b.~~)~~ At least sixty (60) calendar days separate the two sessions within the calendar year; and

c.~~)~~ The center notifies parents/guardians that non-immunized children are enrolled on the above short-term basis.

3~~2~~. The center must inform its child care health consultant (CCHC) prior to the first day of care of the enrollment of a child with special health care needs, if known, so staff receives training, delegation and supervision as indicated by the child's individualized health care plan.

A~~3~~. If the center is located at an elementary school and all the children attend that school, the immunization records may be maintained at the school office but, must be accessible to center staff members and licensing specialists during the hours the center is open.

B. Emergency Procedures

1. Written authorization for emergency medical care must be in the child''s file as required in rule section 2.524~~7.712.81~~.

2. When accidents, injuries, or illnesses occur, the program director or responsible adult in charge must notify the child's parent or guardian and, if necessary, seek medical care for the child.

3. A responsible staff member must be directly supervising any ill or injured child.

4. Portable first aid kits must be available to staff at all times, including field trips, and must be located out of reach of children and maintained in a sanitary condition. First aid kits must be checked and restocked on at least a monthly basis.

C. Medication

1. Any un-expired routine medication, prescription and non-prescription (over-the-counter) medications must be administered only with a current written order of a health care provider with prescriptive authority and with written parental consent. Home remedies, including homeopathic medications, must never be given to a child.

2. The written order by the health care provider with prescriptive authority ~~prescribing practitioner~~ must include:

a. Child''s name;

b. Licensed prescribing practitioner name, telephone number, and signature;

c. Date authorized;

d. Name of medication and dosage;

e. Time of day medication is to be given;

f. Route of medication;

g. Length of time the medication is to be given;

h. Reason for medication (unless this information needs to remain confidential);

i. Side effects or reactions to watch for; and

j. Special instructions.

3. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label.

4. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

5. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label.

6. Staff designated by the program director to give medications must complete the Department-approved medication administration training and have current annual delegation or more often as determined by the Child Care Health Consultant. Delegation must be from the center's Current Child Care Health Consultant who must observe and document the competency of each staff member involved in medication administration. All staff administering medication must have current Department-approved Cardiopulmonary Resuscitation (CPR), first aid training prior to administering medication with the following exceptions:

   a. Staff determined by the program director, in consultation with the Child Care Health Consultant, to be responsible for providing routine emergency medications covered in the approved medication administration training for the treatment of severe allergies or inhaled medications for the treatment of asthma must receive training and delegation from their Child Care Health Consultant for those medications only. Staff must then provide those medications to children based on the instructions from the child's individualized health care plan.

   b. Staff determined by the director, in consultation with the Child Care Health Consultant, to be responsible for providing medications not covered in the approved medication administration training must also be permitted to administer medications and/or medical treatments such as emergency seizure medication, insulin or oxygen with individualized training and delegation from the Child Care Health Consultant based on instructions from the child's individualized health care plan.

   c. Staff may be trained and delegated in the administration of a single rescue medication or rescue medical intervention by the center's Child Care Health Consultant. Such training and delegation must qualify the staff member to provide a rescue medication or treatment for a specific child based on instructions from the child's individualized health care plan.

7. All medications, except those medications specified in the Department's approved medication administration training as emergency medications, must be kept in an area inaccessible to children, but available to staff trained in administering medication. If refrigeration is required, the medication must be stored in either a separate refrigerator or a leak proof container in a designated area of a food storage refrigerator, separate from food and inaccessible to children. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the

centers policies. Access to these medications must be limited (see section 12-22-318, C.R.S.).

8. Emergency medications must be stored in accordance with the Child Care Health Consultant's recommendation. Emergency medications are not required to be stored in a locked area. Emergency medications may be stored in an area easily accessible and identifiable to staff but out of reach of children. When away from the classroom, staff must carry emergency medications in a bag on their person.

9. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

   a. Child's name;

   b. Name of the medication, dosage, and route;

   c. Time medication is to be given;

   d. Special instructions;

   e. Name and initials of the individuals giving the medication; and

   f. Notation if the medication was not given and the reason.

10. Topical preparations such as petroleum jelly and bug sprays may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

11. The center must have a written policy on the storage and access of inhalers and epinephrine auto injectors for all children in care. This policy must be reviewed by the Child Care Health Consultant.

12. The center may, with written parental consent and authorization of the prescribing health care provider, permit children who have asthma to carry their own inhalers or children who are at risk of anaphylaxis to carry their own epinephrine, and use them as directed. The center must have a specific written policy on the storage and access of inhalers and epinephrine for children who are permitted to carry or self-administer these medications. The policy must include a contract with the parent(s)/guardian(s), and child acknowledgement, assigning levels of responsibility of each individual. This contract must accompany orders for the medication from the health care provider, along with confirmation from Child Care Health Consultant that the student has been instructed and is capable of self- administration of the prescribed medications.

13. All staff members and Child Care Health Consultants must be aware of which children have asthma and severe allergies, and which of those may administer their own inhaler or auto injectors.

D. Sun Protection

1. The center must obtain the parent/guardian's written authorization and instructions for applying sunscreen or use of another form of parent/guardian approved sun protection. A health care provider's permission is not needed to use sunscreen at the center.

2. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

3. If sunscreen is provided by the center, parents must be notified in advance, in writing, of the type of sunscreen the center will use.

4. Children may apply sunscreen to themselves under the direct supervision of a staff member.

5. The center must apply sunscreen, have the child apply sunscreen, have the parent or guardian apply sunscreen, or use another form of parent or guardian approved sun protection for children prior to children going outside. Sunscreen must be reapplied as directed by the product label.

E. Control of Communicable Illness

1. When children show signs of communicable illness, they must be separated from other children, the parent(s) or guardian(s) notified, and a medical physician~~doctor~~ or medical facility consulted as needed regarding treatment.

2. Staff members with a communicable illness must not be permitted to work or have contact with children or other staff members if the illness could be readily transmitted during normal working activities.

2.512~~7.712.53~~ PERSONAL HYGIENE

A. Children with specific toileting needs

The center must have one or more designated change areas for all children in need of changing. The change area must:

1. Meet a child's individual and developmental needs and be large enough to accommodate the size of the child;

2. Have a place inaccessible to children for storing all change supplies and disinfecting solutions and products; and

3. Have sufficient supplies.

2.513~~7.712.54~~ FOOD AND NUTRITION

A. The center must show evidence that all meals and snacks provided by the center must meet current United States Department of Agriculture (USDA) Child and Adult Care Food Program meal pattern requirements and be offered at suitable intervals. Children who are at the center for more than 4 hours, day or evening, must be offered a meal.

B. Centers must not provide sugar sweetened beverages to children. These are liquids that have been sweetened with various forms of sugars that add calories and include, but are not limited to: soda, fruitades, fruit drinks, flavored milks, and sports and energy drinks.

C. If 100% fruit juice, which is not a sugar sweetened beverage, is offered as part of meals and/or snacks, it must be limited to no more than twice per week.

D. In centers that do not regularly provide a meal, if a child brings a meal from home that does not appear to meet current USDA Child and Adult Care Food Program meal pattern requirements, the center must have foods available to offer as a supplement to that meal.

E. Meal menus must be planned at least one week in advance, dated, and available to parents. After use, menus must be filed and retained for three (3) months. Records must be available for periodic review and evaluation.

F. The size of servings must be suitable for the child's age and appetite, and sufficient time must be allowed so that meals are unhurried.

2.514~~7.712.55~~ GUIDANCE

A. Guidance must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from situation, talking with the child about the situation, or praise for appropriate behavior

B. Children must not be subjected to physical or emotional harm or humiliation

C. The director must not use, or permit a staff member or child to use, corporal punishment as defined in section 22-1-140, C.R.S~~or other harsh punishment, including but not limited to pinching, shaking, spanning punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of discipline~~.

D. Guidance must not be associated with food, rest, or toileting Children should never be punished for toileting accidents. Children must not be denied food or forced to eat as a disciplinary measure.

E. Separation, when used as guidance, must not exceed five minutes and must be appropriate for the child's age. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked or closed area.

F. Verbal abuse and derogatory remarks about the child are not permitted.

G. Authority for guidance must not be delegated to other children, and the center must not sanction one child punishing another child.

H. Physical exercise must not be used as a form of guidance.

2.515~~7.712.56~~ TRANSPORTATION

A. Transportation Provided by the Center

1. The center is responsible for any children it transports.

2. The center must obtain written permission from parents/guardians for any transportation of their child during child care hours.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at rule section 2.508~~7.712.43~~. The driver of the center vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle unless they are secured in a seat belt that is safe and free from hazard. Children must remain seated while the vehicle is in motion.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Transportation arrangements for school-age children must be by agreement between the center and the children''s parents/guardians, *i.e.*, whether the children can walk, ride a bicycle or travel in a car. The center must monitor the children to ensure they arrive at the center when expected and follow up on their whereabouts if they are late. Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

8. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents/guardians and staff who transport children in their own cars and verify that all drivers have valid driver''s licenses.

B. Requirements for Vehicles

1. Any vehicle used for transporting children to and from the center or during program activities must meet the following requirements:

a. The vehicle must be enclosed and have door locks;

b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer''s specifications;

c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must be operational, safe and free of hazard; and

d. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review.

2. Any child transported must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety law that requires:

a. Children who are under eight (8) years of age and who are being transported, shall be properly restrained in a child restraint system, according to manufacturer's instructions.

b. Children who are at least eight (8) years of age but less than sixteen (16) years of age who are being transported, shall be properly restrained in a safety belt or child restraint system according to manufacturer's instructions.

1. Children who meet the requirements to be restrained in a safety belt must be instructed and monitored to keep the seat belt properly fastened and adjusted

c. Two or more children must never be restrained in one (1) seat belt or child restraint system.

~~2. In passenger vehicles with a manufacturer''s established capacity of sixteen (16) or fewer passengers and less than 10,000 pounds, the following is required:~~

~~a. Each child must be restrained in an individual seat belt or child restraint system;~~

~~b. The provider must not transport more children than any vehicle is able to safely accommodate when child restraint systems and seat belts are properly installed and used in the vehicle;~~

~~c. Lap belts must be secured low and tight across the upper thighs and under the belly; and~~

~~d. Children must be instructed and required to keep the seat belt properly fastened and adjusted.~~

3. In vehicles with a manufacturer''s established capacity of sixteen (16) or more passengers, seat belts for passengers are not required~~, but must be used if provided~~.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must operate the vehicle in a safe and appropriate manner.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved First Aid and safety certificate that includes Cardiopulmonary Resuscitation (CPR) for all ages of children

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. The driver must not eat or use a cellular or other mobile device while driving.

7. The required staff to child ratio must be maintained at all times.

8. All drivers must be at least 20 years of age.

9. Drivers must complete a minimum of four hours of driver training prior to transporting children. The driver training curriculum may be developed and administered by the center and must include at a minimum: behind the wheel training; participant transport attendance procedures, including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedures; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and vehicle evacuation.

~~7.712.6~~ PROGRAM ACTIVITIES

2.516~~7.712.61~~ ACTIVITY SCHEDULES

A. The center must provide parents/guardians with a list of activities it offers.

B. Parents or guardians must be given the opportunity to indicate to the staff of the center if they do not want their child to participate in an activity.

C. Parents/guardians must be notified in advance of all activities that will occur away from the center.

D. Television viewing, including videos, should not be permitted without the approval of a child's parents/guardians, who must be advised of the center's policy regarding television and video viewing.

E. A mobile day camp program must establish a daily itinerary and make available a copy to each child's parent or guardian. A copy must also be or file at the program's headquarters. The itinerary should be followed as closely as possible. In case of an emergency or change in the itinerary, the headquarters of the mobile day camp must be notified immediately. Parents/guardians must be instructed to contact the main headquarters to determine the exact location of their child.

2.5177.712.62 PHYSICAL ACTIVITY

A. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather, for no less than 60 minutes total for programs operating over five hours per day. Activities do not have to occur all at one time.

B. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors or indoors during inclement weather, for no less than 30 minutes total for programs operating from three to five hours per day. Activities do not have to occur all at one time.

C. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors or indoors during inclement weather, for no less than 15 minutes total for programs operating less than 3 hours per day. Activities do not have to occur all at one time.

2.5187.712.63 SCREEN TIME AND MEDIA USE

A. All media that children are exposed to must not contain explicit language or topics.

B. All television, recorded media, computer, tablet, cell phones, video games and other media devices are prohibited during snack or meal times except during a planned special occasion.

C. The center must develop a media and internet usage plan outlining screen time and media use related to their curriculum. The media plan must have information on ongoing communication with children about safe online practices. The center must obtain a signed document stating that the parents/guardians have received this plan, and agree to the activities described in the plan.

D. There is no time restriction for children using personal adaptive equipment or assistive technology.

2.5197.712.64 Equipment and Materials

A. In a building based school-age child care center, rest time and rest equipment must be provided for school-age children who require a rest time.

B. Children at the center must have access to age-appropriate materials and equipment from at least the following categories:

1. Activity supplies;

2. Manipulatives and games;

3. Recreation equipment;

4. Library items; and

5. Science equipment and materials.

C. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading.

~~7.712.65~~2.520 FIELD TRIPS

A. On a field trip or during a mobile school-age child care program:

1. The center must notify the children's parents /guardians in advance of any field trip. The staff-child ratios found at rule section 2.508~~7.712.43.C, D, I~~ must be maintained at all times;

2. All groups of children must be directly supervised by a qualified program director or program leader at all times;

3. An accurate itinerary of each field trip must remain at the center;

4. The staff must have the following information about each child: parents/guardians contact information, health care provider's name, address, and phone number, and the written authorization from parent(s)/guardian(s) for emergency medical care.

5. If children attending the field trip require medications to be administered during the field trip or have special health needs, a staff member with current medication administration training and delegation must attend the field trip;

6. A list of all children and staff on a field trip must be kept at the center; and

7. A copy of the emergency disaster plan must accompany staff offsite.

~~7.712.7~~ BUILDING AND FACILITIES

2.521~~7.712.71~~ FACILITY REQUIREMENTS

A. The mobile day camp program and the outdoor-based day camp program may use as a gathering place a public park or playground if the program primarily includes field trips away from the gathering place. Such programs must have a contingency plan for facilities to use during increment weather. The plan must be available to parents/guardians on a daily basis.

B. If a room(s) inside a building are used for indoor care at least thirty (30) square feet of floor space per child is required. Indoor space is exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry rooms, furnace rooms.

C. When a building is being used during the summer months by a center specifically as a gathering place at the beginning and end of the day, the thirty (30) square feet requirement need not apply. The total amount of time during which the number of children present may exceed the thirty (30) square feet requirement must not exceed three (3) hours. This time must be divided evenly between the morning and the evening.

D. The building based school-age child care center must provide access to an outdoor play area. The outdoor play area may be a city park or public school ground. The play area must meet the following requirements:

1. The center must provide a total outside play area of at least seventy-five (75) square feet per child for a minimum of one-third of the licensed capacity of the center or a minimum of 1500 square feet, whichever is greater;

2. Access to a shaded area, sheltered area, or inside building area must be provided at all times to guard children against the hazards of excessive sun and heat; and

3. The outdoor play area must be maintained in a safe condition by removing debris, dilapidated structures, and worn and broken play equipment. The center must identify hazardous, high-risk areas. These areas must be monitored to reduce the possibility of injury and accidents;.

4. Outdoor play areas provided by the center must not have equipment that exceeds six (6) feet in height for any surface area intended for children's play unless equipped with a protective barrier to prevent children from falling; and.

5. All outdoor climbing equipment over eighteen (18) inches provided by the center must have least six (6) inches resilient surface throughout the use zone.

2.5227.712.72 TOILET FACILITIES

A. Children must be allowed the use of gender-segregated toilet facilities that are consistent with their gender identity, with toilets separated by partitions to provide privacy.

B. There must be a minimum of one (1) toilet per thirty (30) or fewer children for which the center is licensed. Hand-washing facilities must be available at the ratio of one (1) sink per thirty (30) or fewer children. After April 1, 2018 all new construction must have a minimum of one (1) toilet and one (1) hand washing sink per every fifteen (15) or fewer children for which the center is licensed.

2.5237.712.73 FIRE AND OTHER SAFETY REQUIREMENTS

A. General Requirements

1. Buildings must be kept in good repair and maintained in a safe condition.

2. Major cleaning is prohibited in rooms occupied by children.

3. Volatile substances, such as gasoline, kerosene, fuel oil, and oil-based paints, firearms, explosives, and other hazardous items, must be stored away from the area used for child care and be inaccessible to children.

4. Combustibles, such as cleaning rags, mops, and cleaning compounds, must be stored in well-ventilated areas separated from flammable materials and stored in areas inaccessible to children.

5. Closets, attics, basements, cellars, furnace rooms, and exit routes must be kept free from accumulation of extraneous materials.

6. All heating units, gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them. Nothing flammable or combustible can be stored within three (3) feet of a hot water heater or furnace.

7. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe and free of hazards.

8. Equipment, materials, and furnishings, including durable furniture such as tables and chairs, must be stored in a manner that is safe for children.

9. Extension cords cannot be used in place of permanent wiring.

10. Corridors, halls, stairs, and porches must be adequately lighted. Operable battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure.

B. Fire Safety

1. Every building and structure must be constructed, arranged, equipped, maintained, and operated so as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

2. Every building and structure must have at least two (2) approved, alternate means of egress from each floor of the building or to a common hallway leading to the exterior. They must be at different locations.

3. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

4. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. Locks or fastening devices to prevent free escape from the inside of any building must not be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

5. If the building in which the center operates has a security lock on outside exit doors, the center must obtain written permission from the local fire department; and there must be a written sign attached to the door instructing staff that the security lock is not to be utilized when children are present and the center is in operation.

6. Every building and structure must have an automatic or Department-approved manually operated fire alarm system to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

7.712.8 RECORDS AND REPORTS

2.5247.712.81 Children's Records

A. The center must maintain and update annually a record on each child that includes:

1. The child's full name, age, current address, and date of enrollment;

2. Names, home and employment addresses and telephone numbers, which may include cell phone numbers, and e-mail of parents/guardians if available;

3. Any special instructions as to how the parents/guardians can be reached during the hours the child is at the center;

4. Names and telephone numbers of persons other than parents/guardians who are authorized to take the child from the center;

5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if parents/guardians cannot be reached immediately;

6. Name, address, and telephone number of the child's physician, dentist, and hospital of choice;

7. A complete health history including communicable diseases, chronic illnesses or injuries, immunization history, known drug reactions or allergies, medication records, special diet needs, and health care plans as required in rule section 2.511~~7.712.52.A.1~~;

8. A dated written authorization for emergency medical care signed and submitted annually by the parent or guardian. The authorization must be notarized if required by the local health care facility;

9. Written authorization from a parent or guardian for the child to participate in field trips and to participate in program activities, listing all exclusions from authorization;

10. Written authorization from a parent/guardian for the center to transport the child to and from school, whether by walking or driving; and

11. Reports of serious injuries and accidents occurring during care that result in medical attention, admission to the hospital, or death of a child.

2.525~~7.712.82~~ STAFF RECORDS

A. The center office must maintain a record for each staff member, paid or volunteer, which includes the following:

1. Name, address, and birth date of the individual;

2. The date that the staff member was employed by the center;

3. Name, address, and phone number of the person(s) to be notified in the event of an emergency;

4. Verification of the staff member's certifications, qualifications and training requirements;

5. Copies of written references or notes of phone references, as required by rule section 2.507~~7.712.41.D.1~~;

7. Verification that a criminal record check with the Colorado Bureau of Investigation and federal bureau of investigation is in process, or a copy of the results of the staff member's criminal record check; and

8. Verification that a review of the ~~State~~ Department's automated system for reporting child abuse and neglect has occurred or is in process.

B. Each staff member's personnel file must contain all required information within thirty (30) working days of the first day of employment.

2.526~~7.712.83~~ ADMINISTRATIVE RECORDS AND REPORTS

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of time child arrives at and departs from the center;

2. Current health department child care inspection report issued for the assigned license number within the past two (2) years;

3. Current fire department inspection report issued within the past two (2) years; and

4. A list of current staff members, substitutes, and staffing patterns.

B. Each center must submit a report in writing to the Department using the online injury reporting system of any accident or illness occurring at the center that resulted in medical treatment by a physician or other health care professional, hospitalization, or death. This report must be made within twenty-four (24) hours after the accident or illness occurred.

C. A report about a fatality must include:

1. The child's name, birth date, address, and telephone number;

2. The names of the child's parents or guardians and their address and telephone number if different from those of the child;

3. Date of the fatality;

4. Brief description of the incident or illness leading to the fatality;

5. Names and addresses of witnesses or persons who were with the child at the time of death; and

6. Name and address of police department or authority to which the report was made.

D. The center must maintain records of reports of communicable illness made to the Colorado Department of Public Health and Environment or local public health agency.

E. The center must submit to the Department as soon as possible but not longer than twenty-four (24) hours a written report about any child who has been separated from the group outside of the supervision of their assigned staff member or for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents/guardians and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was last seen;

5. Actions taken to locate the child; and

6. The name of the staff person supervising the child.

~~7.712.84~~2.527 CONFIDENTIALITY AND RETENTION

A. The center must maintain complete records of personnel and children as required in~~at~~ rule sections 2.524, 2.525, and 2.526~~7.712.81, 7.712.82, and 7.712.83~~.

B. The confidentiality of all personnel and children's records must be maintained (see rule section 2.116 and 2.124~~7.701.7~~ of the~~,~~ General Rules for Child Care Facilities).

C. Personnel and children's records must be available, upon request, to authorized personnel of the Department.

D. If records for organizations having more than one center are kept in a central file, duplicate identifying and emergency information for personnel and children must also be kept on file at the center attended by the child.

E. The records of children must be maintained by the school-age child care center for at least three (3) years.

RULES REGULATING SPECIAL ACTIVITIES

2.600 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 *et seq*. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 *et seq*. (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, sections 26.5-5-301, *et seq*., C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.

The specific rulemaking authorities granted for Special Activities include sections XXX, C.R.S.

2.601 SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures to become a licensed child care facility, and the health and safety requirements of licensed child care facilities in Colorado. These rules and regulations shall govern the health and safety requirements for special activities including Swimming, Boating, Rafting, Archery, Riflery, Horseback Riding, Trampoline, Climbing, Hiking, Backpacking, And Biking.

2.602 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed child care providers participating in special activities, which include licensed School Age Child Care, Child Care Centers, Neighborhood Youth Organizations, Family Child Care Homes, and Children's Resident Camps.

~~7.719 RULES REGULATING SPECIAL ACTIVITIES [Rev. eff. 6/1/07]~~

~~These rules for Special Activities shall apply to School-Age Child Care Centers, Residential Child Care Facilities, and Children's Resident Camps.~~

2.603~~7.719.1~~ GENERAL PROVISIONS ~~[Rev. eff. 6/1/07]~~

A. There shall be a written program that reflects the purpose of the child care facility, including a list of activities at the child care facility. The written program must be provided to parents.

B. Parents shall be given the opportunity to indicate to child care facility staff whether they do not wish their child to participate in a special activity (see rule sections 2.208(A)(8) of the Rules

Regulating Child Care Centers; 2.319(A)(11) of the Rules Regulating Family Child Care homes; 2.417(A)(9) of the Rules Regulating Children's Resident Camps; and 2.524(A)(9) of the Rules Regulating School Age Child Care.~~7.711.61, A. 10~~).

C. Each phase of the child care facility program shall be under the supervision of a resident qualified staff member who shall be responsible for health and safety precautions. Verification of experience and/or certification shall be in the staff members personnel files at the child care facility.

D. If the child care facility participates in special activities other than those for which rules are found in this rule section, such as ballooning or winter camping, the child care facility shall develop and follow a written plan which includes at least, the following:

1. The qualifications of the supervisor of the activity.

2. The qualifications of any other staff members necessary for proper supervision of the activity.

3. The number of necessary staff members needed to supervise the activity.

4. Conditions under which a child may participate in the activity, such as age or skill level of the child.

5. Any special equipment necessary, its supply and condition.

6. Access to medical treatment.

7. Development of an emergency plan.

E. Paint ball activities where children shoot paint balls at other children are prohibited at a child care facility.

F. The staff member supervising special activities shall possess evidence of appropriate experience, training, and/or certification in the program specialty Said staff member shall be present at the site of the activity whenever the activity is being earned out unless other wise indicated in these rules.

G. The qualified supervising staff member of special activities shall have the following duties:

1. Direct training of other staff members working in the activity.

2. Assign duties to staff members.

3. Assure that all necessary equipment is complete, in good repair, and safe to use.

4. Assure that environmental hazards are not sever enough to cause danger to children.

H. Rules shall be reviewed with children at the beginning of each activity.

I. First Aid supplies shall be available at each special activity site.

J. The staff to child ratio for each type of facility must be followed according to rules for that facility regardless of activity unless the ratio is different for the specified activity, in which case the activity staff to child ratio should apply.

7.719.2 WATER ACTIVITIES

2.6047.719.21 SWIMMING [Rev. eff. 6/1/07]

A. There shall be a swimming supervisor who, as a minimum, holds a current Red Cross life guard training certificate or equivalent, such as a YMCA or Boy Scout aquatics instructor's certificate. If the child care facility is offering swimming instruction, the swimming supervisor must also hold a Red Cross water safety instructor certificate or equivalent.

B. At any time the swimming area is open, there shall be at the swimming area a staff member who holds at least a current life guard training certificate or equivalent for each thirty (30) campers in the water. There shall be present as least one (1) staff member for each ten (10) children in the water. The lifeguard does not count in the staff to child ratio for supervision of children.

C. The swimming area shall be off limits when appropriate numbers of qualified staff members are not present.

D. If the child care facility uses a pool for which the child care facility is not responsible, the child care facility need not provide a lifeguard if there is a qualified lifeguard provided by the pool. If the pool does not provide a qualified lifeguard, staff members meeting qualifications stated at rule section 2.604(B)7.719.2, B. must be provided by the child care facility. There shall be at least one (1) staff lookout counselor at the pool for each ten (10) children in the water.

E. Swimming area rules and emergency procedures shall be posted in a visible location at the swimming area.

F. The swimming pool or swimming area shall meet the standards of the Colorado Department of Public Health and Environment (CDPHE).

G. If children are permitted to swim in a lake or pond, swimming areas shall be clearly designated

H. Before children are permitted to swim in deep water, swimming skills must be tested by property trained staff members.

I. There shall be a system known to child and lookout staff for checking the children when children are in the water.

J. The following equipment must be available for use at the pool side or the take shore in which swimming is permitted:

1. A rescue tube;

2. Reach pole; and,

3. Backboard.

K. Where the size of the body of water makes it impossible to reach victims by reach pole, rescue tube or other rescue device, a rescue boat must be available at all times.

L. If a child care facility has shoreline activities such as wading, fishing, ecology or nature studies, the child care facility shall have a written policy which defines qualifications of persons accompanying the group and safety, factors to be followed. Staff members shall be acquainted with the policy.

M. In the case of a travel-trip camp, there shall be a minimum of one staff member who holds at least current Red Cross life guard training certificate or equivalent who is responsible for all swimming activities.

2.605~~7.719.22~~ BOARDING, CANOEING, SAILING, AND KAYAKING ON FLATWATER ~~[Rev. eff. 6/1/07]~~

A. The boating supervisor shall hold, at a minimum:

1. A current Red Cross life guard training certificate or equivalent; ~~or,~~

2. Boy Scout certificate; ~~or,~~

3. Basic small craft instructor, small craft safety, or paddle safety certificate for the type of craft which is to be supervised; or~~,~~

4. Documentation of experience indicating knowledge and skill in teaching and supervision specific to the watercraft activities to be conducted.

B. The boating supervisor, or staff member equally qualified who has been trained by the boating supervisor, must be on site during the activity.

C. Other staff members shall have appropriate experience and training for the type of craft to be utilized.

D. Whenever children are on the water they shall be wearing a United States Coast Guard approved personal notation device appropriate to the weight of the child.

E. There shall be a minimum of two (2) lookout staff members at the shoreline and/or on the water at any time when children are on the water in boating, canoeing, kayaking or sailing activities. Hazards such as the size of the lake, the skill of the children, the conditions of the water, and the temperature of the water, shall be taken into account by the supervisor of the activity when determining the number and location of lookout staff necessary with the children, but there shall never be fewer staff with the children than those required at rule sections 2.411 of the Rules Regulating Children's Resident Camps; 2.508 of the Rules Regulating School Age Child Care; and 2.216 of the Rules Regulating Child Care Centers ~~7.711.23, D~~.

F. Except for kayaking, there shall be a staff member m any boat which holds one or more children under seven years old.

G. At no time shall the occupancy of the craft exceed the capacity established for the craft by the United States Coast Guard standards.

H. There shall be a warning device, such as a loud whistle, air horn, or other audible signal device, which can readily be heard by persons on the water that indicates the need for children and staff to return to the facility.

I. Where the size and depth of the body of water indicates, there shall be a rescue boat in close proximity to where the activity takes place. This rescue boat shall be in good repair and shall contain appropriate equipment, such as a rescue tube, reach pole, extra oar, or paddle.

J. Water craft shall not enter a swimming area when swimmers are in the water.

2.606~~7.719.23~~ BOATING, CANOEING, TUBING, AND KAYAKING ON CLASS I OR II MOVING WATER ~~[Rev. eff. 6/1/07]~~

A. The boating supervisor shall hold, at a minimum:

1. Current Red Cross life guard training certificate or equivalent; or,

2. Boy Scout certificate; or,

3. Basic small craft instructor certificate for the type of craft which is to be supervised; or,

4. Documentation of experience indicating knowledge and skill in teaching and supervision specific to the watercraft activities to be conducted.

B. The boating supervisor must be on site during the activity.

C. Children shall only canoe, tube, or kayak on Class II or less water.

D. Supervising staff must be experienced and knowledgeable about the river being used, including the height and speed of the river.

E. The child care facility must have a written policy on evaluating the safety of the river. Supervising staff must be trained on the policy.

F. Each child shall wear a Unites States Coast Guard approved personal flotation device whenever they are on the moving water.

G. The supervisor of this activity shall be trained in Red Cross standard First Aid and safety, and Cardiopulmonary Resuscitation (CPR).

H. The supervisor shall be familiar with rescue techniques with canoes, kayaks, and tubes on moving water and shall train children in these techniques.

I. Rescue equipment appropriate to the activity shall be available, such as rope throw bag and rescue tubes.

2.6077.719.24 WHITE WATER RAFTING ON CLASS III AND IV RIVERS (CLASSES OF RIVERS ARE THOSE AS DEFINED BY THE INTERNATIONAL SCALE OF RIVER DIFFICULTY) [Rev. eff. 6/1/07]

A. If the child care facility operates white water rafting, the child care facility must have an active River Outfitter license from be licensed by the Colorado Parks and WildlifeDivision of Parks and Outdoor Recreation as a river outfitter.

B. If a child care facility provides a white water rafting experience by purchase from a river outfitter, the license of the river outfitter must be activevalid.

7.719.3 ARCHERY AND RIFLERY

2.6087.719.31 ARCHERY [Rev. eff. 6/1/07]

A. The archery supervisor shall have certification, documented training or experience from a recognized organization or certifying body for the type of activities offered.

B. The archery range shall be free from hazards and well-marked. There shall be a clear path to the target which is not obstructed by such things as rocks, trees or branches. Traffic, trail, or other camp activities shall not be placed in the direction of the flight of the arrows.

C. Equipment shall be maintained in safe condition. Bows and arrows shall be inspected for fractures, splinters or cracks before each use. Damaged bows and arrows shall not be utilized.

D. Equipment shall be stored under lock and key when not in use. Bows and arrows shall be used only in the specified archery area.

E. If the child care facility has field archery, a procedure shall be established and posted to provide for the safety of the archers, including issuance of arrows at check-in point of the archery trail, check in of archer at the beginning of the archery trail, and check out when archer has completed the trail.

F. The archery supervisor or a staff person trained and authorized by the archery supervisor must be present at all times when children are present at the archery range or field.

G. All archers shall use the same firing line. Arrows shall be issued only at the firing line.

H. Arrows shall be nocked to bow string after shooters are on the firing line and after the signal to shoot has been given.

I. Before arrows are released, shooters shall have a definite target.

J. Movement must be controlled by a supervising staff member. All persons must stay behind the firing line until the signal to retrieve arrows is given. All arrows shall be retrieved at the same time.

2.609~~7.719.32~~ RIFLERY ~~[Rev. eff. 6/1/07]~~

A. The riflery supervisor shall hold a National Rifle Association instructor's or assistance instructor's certification in rifle shooting or equivalent certification from a national organization or shall have verified experience equivalent to that necessary to obtain the National Rifle Association Fire Arm certification.

B. If the riflery supervisor is not present at the rifle range whenever children are firing guns, the staff person(s) trained by the riflery supervisor must be present at all times when children are present.

C. The rifle range shall be free from all hazards, away from other activities and traffic of any type; shall be well marked with danger signs or flags; all blind approaches shall be fenced or blocked off.

D. The range shall be constructed with an appropriately designed bullet-stop so that all bullets will be stopped behind the targets. The bullet-stop shall be free of trees, rocks, boulders, or other objects which may cause a bullet to ricochet away from the bullet-stop.

E. There shall be a well-defined firing line which shall be level with the targets and elevated off the ground. A minimum space of five feet between firing points shall be established or firing points separated by a permanent divider. Targets must be designed to minimize potential for ricochet. Targets cannot depict human form.

F. Only the following types of guns shall be permitted:

1. .22 caliber rimfire, single-shot, bolt-action rifles having no trigger modification other than the factory setting.

2. Pneumatic spring-type and CO_2 air guns may be either .22 caliber or .177 (Ball Bearing (BB) size).

G. Proper condition of the firearms shall be maintained by inspection before and after usage, cleaning as necessary. Firearms that do not function properly shall be repaired and tested before usage.

H. Instruction on the use of firearms shall be presented to the children prior to the use of the rifle range.

I. No more than five cartridges at a time shall be distributed to a child by the responsible supervising staff member and issued only at the firing line.

J. Firing shall be permitted at the firing line only. Observers shall remain behind firing line.

K. Actions of uncased firearms shall be kept open except when on firing line ready to fire.

L. All firearms shall be unloaded immediately upon the command “cease firing” regardless of when this command is given. Actions shall remain open until further commands are given.

M. On ranges where shooters must go down range to change targets and score: movement must be controlled by the supervising staff member.

N. All spent or unspent cartridges must be returned to the supervising staff member.

HORSEBACK RIDING

2.610~~7.719.4~~ HORSEBACK RIDING ACTIVITIES ~~[Rev. eff. 6/1/07]~~

A. The horseback riding supervisor shall have completed at least one of the following:

1. Certificate from nationally recognized organization or riding school; or.

2. Written verification of successful experience in formal horseback riding instruction.

B. The horseback riding supervisor shall train a sufficient number of child care facility riding staff members in the supervision of children in the horseback riding program for the anticipated size of the riding program.

C. Child care facility riding staff shall be trained by the horseback riding supervisor in emergency procedures appropriate to the horseback riding activity.

D. At least two trained riding child care facility staff members, one of whom holds a current American Red Cross standard First Aid and safety certificate or equivalent, shall accompany each trail excursion. If the horseback ride is more than one hour from emergency medical services, at least one staff member shall be trained in wilderness first aid training. If the horseback ride is for seven or more nights and is more than one hour away from emergency medical services, there must be at least one staff member with each group of children with wilderness first responder training, CPR, and medication administration training. If more than twenty children participate in the trail excursion, there shall be a trained riding child care facility staff member assigned for each additional ten (10) or fewer riders.

E. First Aid supplies shall be carried on each trail excursion and available at each horseback riding ring/arena.

F. No person is allowed in the riding area unless the horseback riding supervisor or a trained riding child care facility staff member is present.

G. The riding supervisor shall determine the child's riding experience and level of skill and must take these into account in assigning which horse each child should ride and determining the type of riding activity in which each child should engage. Children shall be given instruction in basic safety, which shall include at least the following: riding rules in the ring and on the trail, how to approach, and mount and dismount.

H. Children shall be appropriately dressed for riding, which shall include shoes or boots and long pants. The riding supervisor must evaluate the footgear of each child and make the stirrups safe for each child's shoe or boot.

I. Protective head gear/helmets are mandatory for children ring riding and on trail rides.

J. Parents must be notified in advance of what type of protective gear is used by the child care facility. If children bring helmets from home, they must be specifically designed for equestrian use, worn correctly, and in good condition.

K. The horseback riding equipment shall be in good condition, properly sized and adjusted for each rider.

L. The horse bam or stable, ring, and commonly used trail(s) shall be in good repair and free of dangerous obstructions.

M. Horses shall be cared for with evidence of an adequate feeding schedule and a means to care for sick horses.

N. Horses shall not be permitted in the other designated activity areas.

TRAMPOLINE

2.6117.719.5 TRAMPOLINE ACTIVITIES [Rev. eff. 6/1/07]

A. The trampoline supervisor shall have documented formal training and experience in use of trampoline and knowledge of safety and spotting techniques.

B. Trampolines shall be equipped with pads along the sides and shall be kept in good repair.

C. No person shall be on the trampoline unless a trampoline supervisor is present and spotters are present on all four (4) sides of the trampoline.

D. Trampolines shall be secured from unauthorized use by any person.

E. The child shall dismount the trampoline by sitting on the edge and sliding off. No child shall jump off the trampoline.

F. Spotters shall be posted on four sides of each trampoline at all times. Spotters shall not stand, sit, or lie on trampoline, but shall stand in a position of readiness, watching the jumper at all times.

7.719.6 CLIMBING ACTIVITIES

2.6127.719.61 ROCK CLIMBING AND ROPES COURSES [Rev. eff. 6/1/07]

A. When a child care facility offers basic/single-pitch rock climbing or advanced/multi-pitched climbing, which includes such topics as the care and use of basic equipment, knots, anchors and belays, verbal signals, safely measures, basic climbing holds and moves, and techniques of rappelling, the following rules must be complied with:

1. The climbing supervisor shall:

   a. Be at least eighteen (18) years old;

   b. Have certification or documented experience in knots, anchors, safety zones, verbal signals, belaying, rappelling, and safe tie-ins, or training or experience from a recognized organization, such as the Association for Challenge Course Technology or certifying body for the type of activities offered; and~~,~~

   c. Have at least six (6) weeks~~'~~ experience in a management or supervisory capacity in similar types of programs.

2. A climbing instructor shall have verified knowledge of technical climbing by completion of a course or climbing school, or a minimum of ten (10) hours of instruction.

3. At least two climbing instructors must be present at the climbing site at all times.

4. There shall be one climbing instructor for each six (6) climbers or two climbing instructors for thirteen (13) children.

5. There shall be a staff member who holds at least a current Red Cross standard First Aid and safety certificate or equivalent at the rock climbing site.

6. First Aid supplies, put together by a person knowledgeable in First Aid supplies needed for climbing activities and possible injuries, shall be present at the climbing site.

7. No child shall be forced to participate in this activity.

8. The climbing supervisor shall be responsible for the proper maintenance of all equipment used. Equipment shall be checked by the supervisor immediately prior to use.

9. All rock climbing equipment shall meet industry standards and shall be maintained, visually and physically inspected, and replaced on a timely basis.

10. Climbers must wear helmets at all times when in designated helmet zones.

11. The child care facility shall not permit an unsupervised climb.

12. The climbing supervisor must have knowledge of where the climb is to occur and must give approval on the day of the climb for the climb to occur.

13. Each rock climber must be visually supervised.

14. Children waiting to climb must be supervised by a staff member.

15. All climbers and rappellers shall be belayed in a top rope manner by a belayer that has been instructed in proper procedures, and directly supervised until competency has been demonstrated.

    a. Have certification or documented experience in knots, anchors, safety zones, verbal signals, belaying, rappelling, and safe tie-ins, or training or experience from a recognized organization, such as the Association for Challenge Course Technology or certifying body for the type of activities offered; and

b. Have at least six (6) weeks experience in a management or supervisory capacity in similar types of programs.

2.613 ADVANCE/ MULTI-PITCHED CLIMBING

A~~B~~. If the child care facility offers advanced/multi-pitched climbing, the following rules shall also be complied with:

1. The climbing supervisor accompanying participants shall:

   a. Hold a current Red Cross standard First Aid and safety certificate or equivalent, and a current certificate for cardiopulmonary resuscitation;

   b. Have been an instructor, under supervision, for two seasons with verifiable experience and a review of any serious accidents;

   c. Have completed a technical climbing school or training in technical climbing with evidence by letter of such completion;

   d. Have led ten additional multi-pitched Class V climbs (the classification of the climbs as defined by the American Alpine Club) within the last two (2) years; and~~,~~

   e. Have knowledge of mountain rescue techniques. If the climb is more than sixty (60) minutes from emergency medical services, the climbing supervisor must hold a current wilderness First Aid training certificate or equivalent.

2. The climbing instructor or the rope leader shall have:

   a. The same training as the climbing supervisor;

   b. Have been an instructor, under supervision, for one season with verifiable experience and a review of any serious accidents;

   c. Completed a technical climbing school or training in technical climbing;

   d. Led five additional multi- pitched climbs; and~~,~~

   e. Knowledge of mountain rescue techniques. No instructor shall take campers on a climb he/she has not completed previously.

3. No child will be the rope leader.

4. A child who is permitted to participate in the climb must be at least thirteen (13) years old. The climbing supervisor shall assess the ability of the child as to the difficulty of the climb.

5. The climbing instructor and climbing site must be approved by the climbing supervisor for each climb.

6. The climbing supervisor, an equally qualified person, or two (2) equally qualified rope leaders shall be present at the climb site.

7. There shall be one rope leader that is at least eighteen (18) years of age to each three climbers in an extended climb.

8. First Aid equipment must be carried with the staff on each climb.

2.614 HIGH AND OR LOW ROPES COURSES OR CLIMBING WALLS

A~~C~~. If the child care facility offers high and/or low ropes courses or a climbing wall, the following rules must be complied with at all times:

1. The rope supervisor must have training and experience on the type of rope course or climbing wall being used and must hold a current standard First Aid and safety certificate or, if the ropes course or climbing wall is more than sixty (60) minutes from definitive care, must hold a wilderness First Aid card.

2. The rope instructor must have training and experience on the type of rope course or climbing wall being used and must be supervised by the rope supervisor and must hold a current standard First Aid and safety certificate or, if the ropes course or climbing wall is more than sixty (60) minutes from definitive care, must hold a wilderness First Aid card.

3. Ropes courses must have written evidence of annual inspection by qualified Association of Challenge Course Technology (ACCT) personnel of course elements for integrity of all hardware, materials, and equipment.

4. Ropes courses must be inspected regularly before use by the rope supervisor or the rope instructor.

5. All equipment and elements of a rope course or climbing wall must be safety checked prior to each use and have written records of regular inspection and maintenance of all equipment and elements utilized.

6. Children must wear safety equipment appropriate to the size of the child and appropriate helmets when using the high ropes course or climbing wall.

7. At all times, there must be a rope supervisor or rope instructor on the ropes course with children.

8. Ropes courses and climbing walls must be off limits to children when a rope supervisor or rope instructor is not present.

9. Access to ropes courses and climbing walls must be controlled by education, signs, and whatever other means are necessary to control unsupervised access.

10. The child care facility must have written safety procedures for use of the ropes course(s) and climbing wall. Staff must be trained on the safety procedures.

~~7.719.7~~ HIKING, BACKPACKING, AND CAMPING

2.615~~7.719.71~~ HIKING ~~[Rev. eff. 6/1/07]~~

If the child care facility offers hiking activities, the following rules shall be complied with:

A. The hiking supervisor must hold a current Red Cross standard First Aid and safety certificate or equivalent; shall have knowledge of outdoor experience and the symptoms and correct treatment procedures for hypothermia and dehydration; and, shall have verifiable experience in hiking and backpacking at the elevation where the hike is to take place.

B. The staff members involved in hiking shall be trained by the supervisor and shall continually observe and monitor campers on the trail for early diagnosis and treatment of injury or illness.

C. When a group takes a hike within 60 minutes of definitive medical care, there must be at least one staff member currently qualified with Red Cross standard First Aid and safety training certificate or equivalent, current Cardiopulmonary Resuscitation (CPR) certificate, and current training in the Department required and approved medication administration training.

D. When a group takes a hiking or backpacking trip where children are either more than sixty (60) minutes away from definitive medical care, there must be at least one staff member with each group of children with current wilderness First Aid training, or equivalent, current CPR training, and current medication administration training.

E. At least two (2) staff members must accompany a group in hikes. From time to time, hiking groups may divide up as long as hikers are always with one staff member and staff members are in visual, verbal or electronic (radio or wireless communication) contact with each other.

F. In selecting the area for hiking, the hiking supervisor shall consider the hiker's age, physical condition and experience, as well as the season, weather trends, methods of evacuation, and communication.

G. Before participation, children must be instructed on:

1. The fundamental safety procedures to follow on the trail;

2. Procedures to follow if lost;

3. Proper health and sanitation procedures on the trail;

4. Rules governing land to be hiked;

5. Potential high-risk areas; and~~,~~

6. Fire precautions.

H. Each hiker shall be equipped with protective clothing against natural elements such as ram, snow, wind, cold, sun, and insects.

I. First Aid supplies, put together by a person knowledgeable in First Aid supplies needed for possible accidents and/or injuries, shall be present on each hike. The contents of each kit shall be adequate for the number of children, the terrain, and the length of the hike.

J. An itinerary of the hiking trip and a list of all people on the hike must be kept at the child care facility.

K. The child care facility must have written safety procedures for hiking, including the written protocol for evacuating a child that becomes sick or injured on a hike. Staff and children must be trained on the safety procedures and protocol.

2.616~~7.719.72~~ BACKPACKING AND CAMPING ~~[Rev. eff. 6/1/07]~~

A. The backpacking and camping supervisor shall have knowledge and verifiable experience in camping and/or backpacking at the elevation where the backpacking or camping will take place.

B. When a group is backpacking or camping within sixty (60) minutes of definitive medical care, there must be at least one staff member currently qualified with Red Cross standard First Aid training certificate or equivalent, current Cardiopulmonary Resuscitation (CPR) training, and current training in the Department required and approved medication administration training.

C. When a group is backpacking or camping where children are more than sixty (60) minutes away from definitive medical care, there must be at least one staff member with each group of children with current wilderness First Aid training or equivalent, current CPR training, and current medication administration training.

D. If a child will require medication administration while away from the child care facility while backpacking or camping, there must be at least one (1) staff member present with current medication administration training who has been delegated by a registered nurse to administer medication.

E. The staff members involved in backpacking or camping shall be trained by the supervisor and shall continually observe and monitor children on the trail for early diagnosis and treatment of injuries or illness.

F. The backpacking or camping supervisor shall consider the hiker's age, physical condition, and experience, as well as the season, weather trends, methods of evacuation and communication, and water quality and quantity in selecting the area for backpacking or camping.

G. Children shall have a safety orientation and be instructed on the applicable precautions, such as:

1. The fundamental safety procedures to follow on the trail;

2. Procedures for a hiker if he/she becomes lost;

3. Proper health procedures, including the need for drinking fluids and eating appropriate foods;

4. Sanitation procedures;

5. Relevant rules and regulations;

6. Potential high-risk areas which may be found on the trail;

7. Fire danger precautions; flash floods; lightening dangers; and~~,~~

8. Procedures when encountering wild animals.

H. Children shall be oriented to minimum impact guidelines and techniques.

I. Each child shall be equipped with protective clothing and equipment against anticipated natural elements such as rain, snow, wind, cold, sun, and insects.

J. Appropriate first aid supplies shall be present on each trip. The contents of each kit shall be adequate for the number of children, the terrain, and the length of the trip.

K. An itinerary of the trip with a list of participants must be available to parents, staff, local police jurisdictions and staff or contractors of the Colorado Department of Human Services.

L. The child care facility must have written safety procedures for backpacking or camping, including the written protocol for evacuating a child that becomes sick or injured.

~~7.719.8~~ BIKING ~~[Rev. eff. 6/1/07]~~

2.617 BICYCLING ON PUBLIC ROADS OR MOUNTAIN TRAILS

If a child care facility has bicycling trips either on a public road or on mountain trails, the following rules shall be complied with:

A. The bicycling supervisor must be familiar with state laws about bicycling; be knowledgeable about the type of bicycling terrain where the bicycle trips will occur be knowledgeable about bicycling in the mountains, if applicable: shall know how to make simple bicycle repairs; and, shall hold at lest a current Red Cross standard First Aid and safety certificate or equivalent.

B. At least two (2) staff members must accompany a group while biking. From time to time, biking groups may divide up as long as bikers are always with one staff member and staff members are in visual, verbal or electronic (radio or wireless communication) contact with each other. A bicycling supervisor or staff member equally qualified and another qualified staff member must accompany each bicycle trip. Correct staff to child ratios must be complied with at all times. There must be one staff member at the beginning and end of each bicycle group.

C. Each bicycler shall wear head protection and the bicycle shall be equipped with brakes in good condition. Bicycles shall be in good condition, properly maintained, inspected prior to each bicycling trip, and adjusted to the size of the child riding the bicycle. Children using their own bicycles will be informed in advance, in writing, that their bicycles must be in good condition, properly maintained, inspected prior to each bicycling trip, and adjusted to the size of the child riding the bicycle.

D. An appropriate bicycle repair kit and First Aid equipment must be taken on each trip. The First Aid supplies must be put together by a person knowledgeable in First Aid supplies needed for bike trips and possible accidents and/or injuries.

E. The bicycling supervisor must instruct children as to emergency procedures, safe riding practices, and road and trail etiquette.

F. The bicycling supervisor shall evaluate each child as to his/her physical capability to participate in the planned bicycling trip, keeping in mind the trip length, terrain, altitude of the trip, and weather conditions.

G. Water/fluids must be taken on each bicycle trip.

H. An itinerary of the biking trip and a list of all people on the biking trip must be kept at the child care facility.

I. The child care facility must have written safety procedures of bike trips, including the written protocol for evacuating a child that becomes sick or injured on a bike trip. Staff and children must be trained on the safety procedures and protocol.

~~7.730~~ RULES REGULATING SUBSTITUTE PLACEMENT AGENCIES

~~All substitute placement agencies must comply with the current "General Rules for Child Care Facilities" 7.701 AND "Rules Regulating Substitute Placement Agencies (less than 24-hour care)"~~

2.800 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 *et seq*. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 *et seq*. (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, sections 26.5-5-301, *et seq*., C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.

The specific rulemaking authorities granted for substitute placement agencies include sections XXX, C.R.S.

2.801 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities. These rules and regulations shall govern the processes and procedures to become a licensed substitute placement agency in Colorado. These rules also address the operations of Substitute Placement Agencies that place a substitute child care provider into a licensed child care facility for the purpose of providing substitute child care. All substitute placement agencies must comply with the "General Rules for Child Care Facilities" in rule section 2.100; and these "Rules Regulating Substitute Placement Agencies," rule section 2.800.

2.802 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed substitute placement agencies that place or that facilitates or arrange placement of short-term or long-term substitute child care providers in licensed child care facilities.

2.803~~7.730.1~~ DEFINITIONS

A~~B~~. "Arrange for placement" means to act as an intermediary by assisting a child care facility in the placement of a substitute child care provider.

B~~C~~. "Background checks" means a set of required records that are obtained and analyzed to determine whether the history of a prospective substitute child care employee meets legal and safety criteria when considering the placement of the individual in a less than twenty-four (24) hour child care facility.

C~~D~~. "Child care center" means a licensed child care center, preschool or licensed school age child care center.

D~~E~~. "Employee" means any individual who is employed by or contracted through the agency.

E~~F~~. "Emergency child care center substitute" means a substitute who works in place of a regular staff member in a child care facility who is unable to work their normally scheduled work hours due to an unexpected event such as an absence of a staff member or personal emergency event. The purpose of the emergency substitute is to provide coverage for a staff member for no more than three (3) calendar days.

F~~G~~. "Emergency family child care home substitute" means a substitute who works in place of a family child care home provider who is unable to work their normally scheduled work hours due to an unexpected event such as an illness or personal emergency event. The purpose of the emergency substitute is to provide coverage for a family child care home provider until parents are able to pick up the children in care.

G~~H~~. "Equally qualified" means that the employee or substitute provider has the same required training and qualifications as the primary provider as specified in the rules regulating family child care homes; rules regulating child care centers or rules regulating school age child care.

H~~I~~. "Family child care home" means a child care facility located within a residence of a primary provider.

~~I~~J. "Licensing" means the process by which the Colorado Department of Early Childhood~~department of human services~~ approves a facility or agency for the purpose of conducting business as a child care facility and/or substitute placement agency.

~~J~~K. "Long term child care center substitute" means a substitute who works in place of a regular staff member who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular staff member be on leave for more than two (2) calendar weeks.

~~K~~L. "Long term family child care home substitute" means a substitute who works in place of a regular family child care home provider who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular family child care home provider to be on leave for more than two (2) calendar weeks.

~~L~~A. "~~Adverse or n~~Negative licensing action" is defined in section 26.5-5-303(16)(a), C.R.S., also known as adverse action, means a final agency action resulting in the denial of an application, the imposition of fines, or the suspension or revocation of a license issued pursuant to the Child Care Licensing Act, or the demotion of such a license to a probationary license.

M. "Short term child care center substitute" means a substitute who works in place of a regular staff member who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular staff member be on leave for more than three (3) days and less than two (2) calendar weeks.

N. "Short term family child care home substitute" means a substitute who works in place of a regular family child care home who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular family child care home to be on leave for more than three (3) days and less than two (2) calendar weeks.

O. "Substitute child care provider," as defined in~~at~~ section 26.5-5-303(27)~~26-6-102(37)~~, C.R.S., means a person who provides temporary care for a child or children in a licensed child care facility, including a child care center and a family child care home~~an adult over the age of eighteen (18) years who provides temporary care for a child or children in a licensed child care facility, including a child care center, preschool, school age child center or a family child care home~~.

P. "Substitute placement agency," defined in~~at~~ section 26.5-5-303(28)~~26-6-102(37.5)~~, C.R.S., means any corporation, partnership, association, firm, agency, or institution that places or that facilitates or arranges placement of emergency, short-term or long-term substitute child care providers in licensed child care facilities providing less than twenty-four (24) ~~-~~hour care.

Q. "Substitute placement," means to coordinate, arrange, and approve the process of an adult substitute child care provider entering an unrelated family child care home or child care facility to provide substitute child care services on an emergency, temporary/short term or long-term assignment. Substitutes may be employees or contract employees of the agency.

2.804~~7.730.11~~ GOVERNING BODY

The governing body must be identified by its legal name. The names and addresses of individuals who hold primary financial control and officers of the governing body must be disclosed fully to the Colorado ~~department of human services~~Department of Early Childhood. The governing body is responsible for providing adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules. When changes of governing body occur, the new governing body must immediately submit an original application and pay the required fee before a new license can be issued.

A. A substitute placement agency, herein also referred to as the "the Agency" may not be operated without a license, as required by law, to be issued by the ~~state~~ Department in conformity with all rules and regulations.

B. The substitute placement agency must:

1. Maintain the written purpose and policies for the general operation and management of the agency, including the placement of substitutes. When such purpose and policies are reviewed and revised, the ~~state~~ Department must be advised of such changes. The purpose and policies at a minimum must include:

a. The types of child care facilities in which substitutes will be placed, including the ages of children served at the child care facility where substitutes will be placed and the geographic area(s) the agency expects to serve;

b. The responsibilities for child care facilities utilizing the substitute placement agency;

c. Itemized fee schedule, including client set up fees, if applicable;

d. Refund policy;

e. Cancellation policy;

f. Mileage/travel policy;

g. Minimum scheduled time policy;

h. Services and types of substitutes available to the community; and

i. The responsibilities of the agency and the child care facility for reporting suspected child abuse or neglect.

2. The substitute placement agency must obtain a fully executed and signed contract with the child care facility prior to placing substitutes in the child care facility.

3. The substitute placement agency must develop and implement personnel policies including, but not limited to:

a. Job descriptions for substitutes;

b. Qualifications for the position in accordance with current licensing standards;

c. The duties and responsibilities of substitutes;

d. The responsibilities of the substitute within a child care facility;

e. The proper supervision of children;

f. Proper guidance techniques;

g. Proper name to face attendance and transitions;

h. The identification and symptoms of suspected child abuse or neglect; and

i. The reporting of suspected child abuse, including the statewide child abuse reporting hotline.

4. Substitutes must be informed of their duties at the time of employment or acceptance of a contract with the agency, and before being placed in a child care facility.

5. Inform the Department, in writing, of:

a. A change in the executive director or the main contact of the agency within ten (10) calendar days.

b. The hours of operation the agency office is open and available for inspection of agency records.

6. Notify the Department, in writing, within twenty-four (24) hours, anytime a substitute is the subject of a child protection investigation that resulted while placed at a child care facility; a substitute was the staff member in charge of a classroom and a child received an injury requiring emergency medical treatment; a substitute is responsible for a safe sleep violation or a substitute has been terminated as a result of their~~his/her~~ actions while placed at a child care facility.

7. Document and report within twenty-four (24) hours, in writing, to the Colorado Department of Early Childhood~~department of human services~~ when the substitute from the agency is the staff member responsible for the child(ren~~,~~) in a child care facility and the child receives an injury resulting in medical care or treatment, any accident or illness occurring at a child care facility that resulted in medical care or treatment by a ~~physician or other~~ health care provider~~fessional~~, hospitalization, or death.

8. Carry public liability insurance. The applicant or licensee must submit the amount of the insurance and the name and the address of the insurance agency providing the insurance to the agency. Documentation of current liability insurance must be on file and available for review at all times at the agency.

9. Complete the licensing renewal requirements by:

a. Submitting the license continuation notice and fee prior to the annual due date of the continuation notice;

b. Paying the prescribed application or continuation fee pursuant to rule section 2.111 of the General Rules for Child Care Facilities~~7.701.4~~;

c. Cooperating with on-site monitoring inspections and investigations to assess the agency's compliance with the rules for substitute placement agencies.

~~7.730.2~~ PERSONNEL

2.805~~7.730.21~~ GENERAL REQUIREMENTS FOR ALL SUBSTITUTES

A. There must be a dated letter of agreement with each substitute which includes the specific job responsibilities/job description. The letter of agreement must be executed upon hire by both the agency and the substitute. Prior to being placed at a child care facility, substitutes must sign a statement indicating that they have read and understand the agency policies and procedures. All substitutes must be notified of changes to policies and procedures.

B. All substitutes must be eighteen (18) years or older and qualified for the position which they~~he/she~~ will be providing substitute care.

C. All substitutes must be registered in the professional development information system.~~;~~

D. All substitutes must have completed all the pre-service training courses listed ~~at~~ in rule section 2.806(A)(4)~~7.730.3d1-6j,~~ prior to being placed at a child care facility.~~;~~

E. All substitutes must complete the Department-approved playground safety training prior to working with children and annually.~~;~~

F. All substitutes must complete the Department-approved injury prevention training prior to working with children and annually.~~;~~

G. The personnel file of each substitute must contain clearance or arrest report from the Colorado Bureau of Investigation resulting from the staff member's criminal record check in accordance with rule section 2.117~~7.701.33~~ of the General Rules for Child Care Facilities.

H. The personnel file of each substitute must contain the results of the ~~state~~ Department's automated child abuse and neglect system. In accordance with rule section 2.116~~7.701.32~~ of the General Rules for Child Care Facilities.

I. Substitutes must be current for all immunizations routinely recommended for adults by their health care provider.

J. All staff must have at least one (1) hour of child development training within ninety (90) days of employment. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This training is required once, and will count toward ongoing training requirements if taken after the date of hire.

2.806~~7.730.22~~ PERSONNEL POLICIES, ORIENTATION AND STAFF DEVELOPMENT

A. A written statement of personnel policy shall be provided to each substitute or qualified applicant. This statement shall, at a minimum, contain the following information:

1. A job description which outlines the duties, responsibilities, qualifications; and educational requirements for the position.

2. A procedure for tracking the placement hours, including the name of the facility, the license number, facility address and ages of children where the substitute is placed.

3. Prior to working with children, each substitute must read and be instructed about the policies and procedures of the Agency, including those related to proper supervision of children, identification and symptoms of suspected child abuse or neglect, the reporting of suspected child abuse. Substitutes must sign a statement indicating that they have read and understand the Agency's policies and procedures.

4. A written pre-service training plan for each substitute. Each substitute must complete the following training before being placed in a child care facility:

a. Each substitute working with infants less than twelve (12) months old must complete a Department-approved safe sleep training prior to working with infants less than twelve (12) months old. This training must be renewed annually and may be counted towards ongoing training requirements.

b. Each substitute working with children less than three (3) years of age must complete a Department-approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed annually and counts towards ongoing training requirements.

c. Each substitute must complete a Department-approved standard precautions training that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and counts towards ongoing training requirements.

d. Prior to working with children and annually each substitute must be trained using Department-approved training about child abuse prevention, including common symptoms and signs of child abuse.

e. Prior to working with children and annually each substitute must be trained using a Department-approved training on how to report, where to report and when to report suspected or known child abuse or neglect.

f. The agency must ensure that each substitute is familiar with the licensing rules governing the specific child care license type in which the substitute will be placed within thirty (30) calendar days of employment at the substitute placement agency.

g. The Agency must ensure that each substitute is familiar with the rules and regulations governing the health and sanitation of child care facilities in the state of Colorado if placed in a facility that these rules apply within thirty (30) calendar days of employment at the substitute placement agency.

h. Each substitute must have current Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) certification before working in a classroom alone.

i. Each substitute must complete a minimum of fifteen (15) clock hours of training each year beginning with the start date of the employee. At least three (3) clock hours per year must be in the focus of social emotional development.

j. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:

1) Child growth and development, and learning or courses that align with the competency domains of child growth and development;

2) Child observation and assessment;

3) Family and community partnership;

4) Guidance;

5) Health, safety and nutrition;

6) Professional development and leadership;

7) Program planning and development; or~~,~~

8) Teaching practices

k. Each one (1) semester hour course with a direct connection to the competency area listed in rule section 2.806(A)(4)(j)~~7.702.33, L, 1-8~~, taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.

l. Training hours completed can only be counted during the year taken and cannot be carried over.

m. To be counted for ongoing training, the training certificate must have documentation that includes:

1) The title of the training;

2) The competency domain;

3) The date and clock hours of the training;

4) The name or signature, or other approved method of verifying the identity of trainer or entity;

5) Expiration of training if applicable; and

6) Connection to social emotional focus if applicable.

5. The substitute must have a complete file maintained at the substitute placement agency and have a portable file available for review at all times to both licensing and the child care facility where the substitute is providing substitute care. Documentation of qualifications for the position includes:

a. Certificate verifying all pre-service training, including name, phone number, and license number of agency;

b. Department issued director letter; or

c. Department issued early childhood teacher letter; or

d. Official college transcript and letters of experience; or

e. Credential 2.0 level 3 or higher; and

f. First aid and CPR certificates; and

g. Complete background check; and

h. Emergency contact name, address and phone number.

6. Substitutes must not consume or be under the influence of any substance that impairs their ability to care for children while caring for children.

7. Illegal drugs, drug paraphernalia, marijuana and marijuana infused products, and alcohol must never be present on the premises of the facility.

8. Substitutes must maintain the confidentiality of the children, families and the child care facility where the substitute is placed.

9. Substitutes are responsible for documenting experience hours with the specific ages of children cared for, while providing substitute child care for the purpose of employment verification with the agency.

10. Substitutes must not take personal photos of children, or make reference to any personal information of children, families or other child care facilities, including staff, on social media, email, text messages or other means of communication, written or verbal.

11. When caring for children, substitutes must refrain from personal use of electronics including, but not limited to, cell phones and portable electronic devices.

12. Substitutes must sign in and out of every facility each time they work at a child care facility.

2.807~~7.730.23~~ CHILD CARE CENTER SUBSTITUTE QUALIFICATIONS

~~A. Substitute for a child care center~~

A~~1~~. Must meet requirements found ~~at~~in rule sections 2.805 and 2.806 ~~7.730.21~~; and

B~~2~~. Must meet the current minimum education and experience requirements for the position in which the substitute is providing child care.

C~~B~~. Large child care center director: the educational requirements for the director or substitute director of a large center must be met by satisfactory completion of one of the following. Official college transcripts must be submitted to the Department for evaluation of qualifications.

1. A Bachelor degree in Early Childhood Education from a regionally accredited Colorado college or university.~~; or,~~

2. A current Early Childhood Professional Credential Level IV version 2.0 as determined by the Colorado Department of Education.~~; or,~~

3. A Master's Degree with a major emphasis in Child Development, Early Childhood Education, Early Childhood Special Education.~~; or,~~

4. Completion of all of the following three (3) semester hour courses from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas:

    a. Introduction To Early Childhood Professions;

    b. Introduction To Early Childhood Lab Techniques;

    c. Early Childhood Guidance Strategies For Children;

    d. Early Childhood Health, Nutrition, And Safety;

    e. Administration Of Early Childhood Care And Education Programs;

    f. Administration: Human Relations For Early Childhood Professions or Introduction To Business; Early Childhood Curriculum Development;

g. Early Childhood Growth and Development;

h. The Exceptional Child; and~~,~~

i. Infant/Toddler Theory and Practice; or the Department approved Expanding Quality Infant/Toddler training; ~~or,~~

5. Completion of a course of training approved by the Department that includes course content listed at rule section 2.806(A)(4)(j)~~7.730.22c, a-j~~, and documented experience.

6. Department approved alternative pathway or credential.

7. The experience requirements for the director of a large center must be met by completion of the following amount of work experience in a child development program, which includes working with a group of children in such programs as a preschool, child care center, kindergarten, or Head Start program:

a. Persons with Bachelor's or Master's degree with a major emphasis in Child Development, Early Childhood Education, Early Childhood Special Education, or an Early Childhood Professional Credential Level IV version 2.0 as determined by the Colorado Department of Education; no additional experience is required.

b. Persons with a 2-year college degree in Early Childhood Education must have twelve (12) months (1,820 hours) of verified experience working directly with children in a child development program.

c. Persons with a Bachelor's degree and completion of courses specified in rule section~~s~~ 2.213(B)(1) of the Rules Regulating Child Care Centers~~7.702.42, A, 3, A-J~~, and must have twelve (12) months (1,820 hours) of verified experience working directly with children in a child development program.

d. Persons who have no degree but have completed the thirty (30) semester hours specified in rule section 2.213(B)(2) in the Rules Regulating Child Care Centers~~7.702.42, A, 3, A-J~~, must have twenty-four (24) months (3,640 hours) of verified experience working directly with children in a child development program.

e. Verified experience acquired in a licensed Colorado Family Child Care Home or School-Age Child Care Center may count for up to half of the required experience for director qualifications. To have Colorado Family Child Care Home experience considered, the applicant must be or have been the licensee. The other half of the required experience must be working directly with children in a child development program;

f. Experience with five (5) year olds must be verified as follows:

i. If experience caring for five (5)- year -old children occurs in a child care center classroom, the hours worked shall be counted as preschool experience; or~~,~~

ii. If experience caring for five (5)- year- old children occurs in an elementary school program, the hours worked shall be counted as school-age experience.

D~~C~~. The small center director qualifications must be met by satisfactory completion of:

1. A current professional teaching license issued by the Colorado Department of Education with an endorsement in the area of Early Childhood Education or Early Childhood Special Education;

2. A current Early Childhood Professional Credential Level III version 2.0 as determined by the Colorado Department of Education;

3. Three (3) years' satisfactory experience in the group care of children less than six (6) years of age (5,460 hours) and at least two (2) 3-semester hours from a regionally accredited college or university, at either a two-year, four- year, or graduate level, in each of the following subject or content areas in early childhood education; one of the courses must be either Introduction to Early Childhood Education or Guidance Strategies;

4. Two (2) years' college education (sixty semester hours) at a regionally accredited college or university, at either a two-year, four- year, or graduate level, in each of the following subject or content areas with at least two (2) 3-semester-hour courses in early childhood education; one (1) of which must be either Introduction to Early Childhood Education or Guidance Strategies; and one (1) year (1,820 hours) of satisfactory experience in the group care of children less than six (6) years of age;

5. Current certification as a Child Development Associate (CDA) or other Department approved credential; or,

6. A two (2) year college degree in Child Development Or Early Childhood Education from a regionally accredited college or university, at either a two-year, four year or graduate level, in each of the following subject or content areas that must include at least one (1) 3- semester hour course in either Introduction to Early Childhood Education or Guidance Strategies and six (6) months (910 hours) satisfactory experience in the group care of children less than six (6) years of age; and.

7. Department approved alternative pathway or credential.

ED. The Early Childhood Teacher must be met by satisfactory completion of:

1. A Bachelor's degree from a regionally accredited college or university with a major area of study in one of the following areas:

   a. Early Childhood Education;

   b. Elementary Education;

   c. Special Education;

   d. Family And Child Development; or,

   e. Child Psychology.

2. A Bachelor's degree from a regionally accredited college or university with a major area of study in any area other than those listed atin rule section 2.807(C)(4)7.730.23a5, and additional two (2) three-semester hour early childhood education college courses with one course being either Introduction to Early Childhood Education or Guidance Strategies:;

   a. Current Early Childhood Professional Credential Level III version 2.0 as determined by the Colorado Department of Education;

b. A 2-year college degree, sixty (60) semester hours, in early childhood education from a regionally accredited college or university, which must include at least two (2) three-semester hour courses, one of which must be either Introduction to Early Childhood Education or Guidance Strategies; and at least six (6) months (910 hours) of satisfactory experience;

c. Completion of twelve (12) semester hours from a regionally accredited college or university, at either a two~~-~~year, four~~-~~year, or graduate level, in each of the following subject or content areas in early childhood education and one of the three (3) semester hour courses must be either Introduction to Early Childhood Education or Guidance Strategies, plus nine (9) months (1,395 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

d. Completion of a vocational or occupational education sequence in Child Growth and Development plus twelve (12) months (1,820 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

e. Current certification as a Child Development Associate (CDA) or other Department-approved credential;

f. Completion of a course of training approved by the Department that includes training and work experience with children in a child growth and development program plus twelve (12) months (1,820 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual; ~~or,~~

g. Twenty-four (24) months (3,640 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual. Satisfactory experience includes being a licensee of a Colorado family child care home; a teacher's aide or teacher in a child care center, preschool, or elementary school, plus either:

1~~h~~. A current Colorado level I credential; or~~,~~

2~~i~~. Two (2) three-semester hour Early Childhood Education college courses from a regionally accredited college or university, at either a two-year, four~~-~~year, or graduate level, in each of the following subject or content areas with one course being either Introduction to Early Childhood Education or Guidance Strategies.

j. Department approved alternative pathway or credential.

3. All college course grades toward Early Childhood Teacher qualifications must be "C" or better.

F~~E~~. Assistant early childhood teacher

1. Completion of one of the Early Childhood Education courses in rule section 2.215(A)(1) of the Rules Regulating Child Care Centers~~7.702.42, a~~, with a course grade of "C" or better and twelve (12) months (1,820 hours) verified experience in the care and supervision of four (4) or more children less than six (6) years of age, who are not related to the individual. Satisfactory experience includes being a licensee of a Family Child Care Home; a teacher's aide in a center, preschool or elementary school. Assistant Early

Childhood Teachers must be enrolled in and attending the second (2nd) Early Childhood Education class which will be used as the basis for their qualification for the position of Early Childhood Teacher;

2. Persons having completed two (2) of the Early Childhood Education classes referenced in rule section 2.215(A)(1) of the Rules Regulating Child Care Centers~~7.702.42, a~~, with a course grade of "C" or better and no experience; or~~,~~

3. A current Early Childhood Professional Credential level I version 1.0 or 2.0 as determined by the Colorado Department of Education.

G~~F~~. Staff Aide

1. Staff Aides must be at least sixteen (16) years of age and must work directly under the supervision of the Director or an Early Childhood Teacher.

2. Infant Staff Aides must be at least eighteen (18) years of age.

3. Staff Aides, without supervision from an Early Childhood Teacher or Director, may supervise no more than two (2) preschool age children while assisting the children with diapering or toileting.

H~~G~~. The Kindergarten teacher qualifications must be met by satisfactory completion of:

1. Each teacher of a kindergarten class must have the same qualifications as a director for a large center (see rule section 2.215(D) of the Rules Regulating Child Care Centers~~7.702.42~~), be state certified or licensed as an elementary teacher by the Colorado Department of Education, or have a four (4) year degree from a regionally accredited college or university in Elementary or Early Childhood Education.

2. A current Early Childhood Professional credential level iii version 2.0 as determined by the Colorado Department of Education.

I~~H~~. The Infant Program Supervisor qualifications must be met by satisfactory completion of:

1. A Registered Nurse, with an active license from the State Board of Nurings~~licensed to practice in Colorado~~, with a minimum of six (6) months of experience in the care of infants.

2. A Licensed Practical Nurse, with an active license from the State Board of Nursing~~licensed to practice in Colorado~~, with twelve (12) months of experience in the care of infants.

3. An adult who holds a certificate in Infant and Toddler Care from a regionally accredited college or university with completion of a minimum of thirty (30) semester hours in the development and care of infants and toddlers in a group setting.

4. An adult who is currently certified as a Child Development Associate (CDA) and has completed the Department approved Expanding Quality in Infant and Toddler Development Course of training.

5. An adult who:

   a. Holds a current Early Childhood Professional credential level III version 2.0, as determined by the Colorado Department of Education;

b. Has completed one three-semester-hour class in infant/toddler development; or~~,~~

c. Has completed the Department-approved "Expanding Quality in Infant and Toddler Development" and holds twelve months of verifiable full-day experience working with infants and/or toddlers.

6. An adult who:

a. Is at least nineteen (19) years of age, ~~and,~~

b. Is qualified as an Early Childhood Teacher ~~and~~,

c. Has a minimum of twelve (12) months of verifiable full-day experience in the group care of infants or toddlers; and~~,~~

d. Has completed at least two (2) three (3)-semester hour college courses from a regionally accredited college or university on the development and care of infants and toddlers in a group setting, one (1) of which must be infant/toddler development or the Department approved Expanding Quality in Infant and Toddler Development course of training.

7. The Infant Program Early Childhood Teacher qualifications must be met by satisfactory completion of:

a. Eight (8) hours of orientation in the infant program from the Infant Program Supervisor including, but not limited to, the following topics: toys and equipment, appropriate activities for infants and toddlers, appropriate sleep positions for infants and toddlers, the safe and appropriate diaper change technique; ~~and,~~

b. At least six (6) months of experience in the care of infants or toddlers; and~~,~~

c. Meet qualifications for an Early Childhood Teacher found ~~at~~in rule section 2.215(A) of the Rules Regulating Child Care Centers~~7.702.44, a~~, or be qualified as an infant program supervisor.

8. The Infant Program Staff Aide must be at least eighteen (18) years of age, must have completed eight (8) hours of orientation as listed above, at the infant program and must work under the direct supervision of an Infant Early Childhood Teacher.

9. Substitutes for infant program staff must hold a current Department-approved first aid and safety certificate that includes Cardiopulmonary Resuscitation (CPR) for all ages of children.

10. The toddler program Early Childhood Teacher qualifications must be met by satisfactory completion of:

a. A Registered Nurse, with an active license from the State Board of Nursing~~licensed to practice in Colorado~~, with a minimum of six (6) months of experience in the care of infants and/or toddlers;

b. An adult who holds a certificate in Infant and Toddler Care from a regionally accredited college or university with completion of at least thirty (30) semester hours or equivalent in such courses as Child Growth and Development, Nutrition, and Care Practices with children birth to three (3) years of age;

c. An adult who is certified as a Child Development Associate (CDA) or certified Child Care Professional (CCP) or holds another Department-approved certificate;

d. A Licensed Practical Nurse with at least twelve (12) months of verifiable experience in the care of children less than three (3) years of age;

e. An adult who meets the education and experience requirements for Early Childhood Teacher of a large center ~~(~~pursuant to rule section 2.215(A) of the Rules Regulating Child Care Centers~~7.702.44, A~~); or~~,~~

f. A current Early Childhood Professional Credential level II version 1.0 or level III version 2.0 as determined by the Colorado Department of Education.

J~~I~~. The Toddler Program Staff Aide must be at least sixteen (16) years of age, must work directly under the supervision of the director or a toddler Early Childhood Teacher, and must have completed eight (8) hours of orientation at the toddler program.

1~~a~~. Substitutes for toddler program staff must hold a current Department-approved first aid and safety certificate that includes CPR for all ages of children.

2~~b~~. Substitutes placed in an infant and toddler program affiliated with a teen parent programs that are operated by accredited public-school systems on school premises must meet the following staff requirements by:

a~~i~~. Director qualifications may be met by a certified teacher with a major in Home Economics Education or a vocationally credentialed teacher in Consumer and Homemaking or Early Childhood Occupations. The Director must complete at least three (3) semester hours in administration of a child care center.

b~~ii~~. The Director must be present in the infant program classroom or adjacent teen parent classroom at least sixty percent (60%) of any day the center is open.

c~~iii~~. If the Director cannot be present sixty percent (60%) of any day, an individual who meets director qualifications must substitute for the Director.

d~~iv~~. Infant Staff Aides must be at least fifteen (15) years of age and may be parents-to-be, parents of enrolled infants, or students enrolled in a child care related course with the sponsoring school system.

e~~v~~. Substitutes for infant program staff must be from the sponsoring school system~~''~~s list of approved substitute staff members. Substitutes who do not meet minimum staff qualifications can work no more than ten (10) consecutive business days per assignment.

f~~vi~~. Substitutes for infant program staff must hold a current Department-approved first aid and safety certificate that includes CPR for all ages of children.

2.808~~7.730.24~~ FAMILY CHILD CARE HOME SUBSTITUTE QUALIFICATIONS

A. Regular Family Child Care Home

1. Must meet requirements found ~~at~~in rule sections 2.805 and 2.806~~7.730.21~~;

2. Be familiar with the Rules Regulating Family Child Care Homes;

3. Be familiar with the home and provider's policies and procedures;

4. Know the names, ages and any special needs or health concerns of the children; and

5. Know the location of emergency information.

B. Infant/Toddler Family Child Care Homes

1. Must meet requirements found ~~at~~in rule section 2.805 and 2.806 ~~7.730.21~~;

2. Be familiar with the Rules Regulating Family Child Care Homes;

3. Be familiar with the home and provider's policies and procedures;

4. Know the names, ages and any special needs or health concerns of the children;

5. Know the location of emergency information; and~~.~~

6. Must have completed one (1) year of supervised experience caring for children who are younger than three (3) years old. The experience may have been obtained as:

   a. A Colorado licensed Family Child Care Home;

   b. A military licensed child care home;

   c. A provider, in a family foster home certified for children younger than three (3) years of age; or~~,~~

   d. An employee in a licensed child care center in an infant and/or toddler program.

C. The substitute for the large family child care home must be qualified by:

1. Must meet requirements found in rule sections 2.805 and 2.806;

2~~1~~. A minimum of two (2) years of documented satisfactory experience in the group care of children under the age of six (6) years or as a licensed home provider in Colorado. Equal experience operating as an approved military child care home is accepted; ~~or,~~

3~~2~~. A minimum of two (2) years of college education from a regionally accredited college or university, with at least one (1) college course in Early Childhood Education, plus one (1) year of documented satisfactory experience in the group care of children as:

   a. A licensed home provider in Colorado;

   b. A military licensed child care home;

   c. A Colorado certified family foster home; or~~,~~

   d. A staff member in a licensed child care center.

4~~3~~. Current certification as a Child Development Associate (CDA); ~~or,~~

5~~4~~. Completion prior to licensing of the ~~State~~ Department approved Expanding Quality Infant/Toddler course; and~~,~~

a. A minimum of two (2) years of experience as a licensed child care provider holding a permanent license in Colorado immediately before becoming a licensee of a large child care home; or~~,~~

b. A minimum of two (2) years of full-time experience in a licensed program. The group care shall have been with children who are under the age of six (6) years.

6~~5~~. Substitutes working in place as the Large Family Child Care Home Staff Aides must be at least sixteen (16) years of age and must work directly under the supervision of the primary provider or a substitute who is equally qualified as a Large Family Child Care Home provider. If left alone with children, the staff aide substitute or assistant provider substitute must meet all same age and training requirements as the provider.

2.809~~7.730.25~~ SCHOOL AGE CHILD CARE SUBSTITUTE QUALIFICATIONS

A. Substitute for school age child care:

1. Must meet requirements found ~~at~~in rule sections 2.805 and 2.806 ~~7.730.21~~;

B. Substitute program director

1. Must meet requirements ~~at~~of rule sections 2.805 and 2.806 ~~7.730.24 A 1 AND~~ 2;

2. The Program Director substitute must be at least twenty-one (21) years of age. The substitute program director must have demonstrated to the Agency, prior to placement at a school age child care center, maturity of judgment, administrative ability and the skill to appropriately supervise and direct school-age children in an unstructured setting.

3. The Substitute Program Director must have verifiable education or training in work with school-age children in such areas as Recreation, Education, Scouting or 4-H; and the program director must have completed at least one of the following qualifications:

a. A four (4) year college degree with a major such as Recreation, Outdoor Education, Education with a Specialty in Art, Elementary or Early Childhood Education, or a subject in the Human Service Field; ~~or;~~

b. Two years of college training and six (6) months (910 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

c. Is qualified as a Large Child Care Center Director.~~; or~~

4. Three years (5,460 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience and one of the following qualifications:

a. Complete six semester hours, or nine quarter hours in course work from a regionally accredited college or university; ~~or~~

b. Forty (40) clock hours of training in course work applicable to school-age children and the Department-approved courses in Injury Prevention, and Playground Safety for School-Aged Child Care Centers within the first nine (9) months of employment; or~~.~~

c. Satisfactory experience includes experience in the care and supervision of four or more children from the ages of four (4)-eighteen (18) years old, unrelated to the individual, since attaining the age of eighteen (18).

C. Substitute program leaders for school age child care centers

1. Must meet requirements found ~~at~~in rule sections 2.805 and 2.806 ~~7.730.21~~;

2. Each Substitute Program Leader must be at least eighteen (18) years of age, demonstrate ability to work with children, and must meet the following qualifications:

a. Complete the Department-approved course in Injury Prevention;

b. Complete the Department-approved course in Playground Safety for School-Aged Child Care Centers. This requirement does not apply to day camps that do not regularly use a playground; and

c. Must have at least three (3) months (460 hours) of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

D. Substitute program aides for school age child care centers

1. Must meet requirements found in rule sections 2.805 and 2.806;

2~~1~~. Substitute Program Aides must be at least sixteen (16) years of age. Program Aides must work directly under the supervision of the Program Director or Program Leaders and must never be left alone with children.

3~~2~~. Substitute Program Aides can be counted as staff in determining child care staff ratios.

RECORDS

2.810~~7.730.26~~ STAFF RECORDS~~PERSONNEL FILES~~

A. The center office must maintain a record for each staff member that includes the following:

1. Documentation for any substitute employed by the agency to determine if the individual has ever been convicted of a disqualifying crime as found ~~at~~in rule section 2.117~~7.701.33~~ of the General Rules for Child Care Facilities. The personnel file of each substitute of the center must contain clearance or arrest report from the Colorado Bureau of Investigation;

2. Documentation for any substitute employed by the Agency to determine if the individual has a confirmed report for child abuse or neglect reported to the ~~State~~ Department~~''~~s Automated System as found ~~at~~in rule section 2.116~~7.701.32~~ of the General Rules for Child Care Facilities. The personnel file of each substitute must contain the results of the ~~State~~ Department's Automated System.

3. Substitutes must be current for all immunizations routinely recommended for adults by their health care provider.

4. Prior to being placed in a child care facility, substitutes must submit to the Agency a medical statement, signed and dated by a licensed ~~Physician or other Health Care Professional~~medical health care provider, verifying that they are in good mental, physical, and emotional health appropriate for the position for which they have been hired. This statement must be dated no more than six (6) months prior to employment or within thirty

(30) calendar days after the date of employment. This statement must indicate when subsequent medical statements are required. Subsequent medical statements must be submitted as required in writing by a ~~Physician or other~~ medical health care pro~~fessional~~vider.

5. If, in the opinion of a Physician or Mental Health Professional~~Practitioner~~, an employee~~'~~s examination or test results indicate a physical, emotional, or mental condition that could be hazardous to a child, other staff, or self, or that would prevent satisfactory performance of duties must not be assigned or returned to a position until the condition is cleared to the satisfaction of the examining ~~Physician or other Health Care Professional~~medical health care provider.

6. Name, address, phone number and birthdate of the individual;

7. Verification of education, work experience, employment, training, and completion of first aid and Cardiopulmonary Resuscitation (CPR) courses;

8. Date of employment;

9. Record of placements including dates, number of hours worked, name, address and license number of the child care facility where the substitute was placed.

10. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency.

11. Substitute records must be available, upon request, to authorized personnel of the ~~State~~ Department or Department representatives.

12. The records of the substitute must be maintained by the substitute placement agency for at least three (3) years. The current files must be maintained at the Agency, the previous two (2) years may be stored at either the Agency or a central location. If requested, the records must be provided to the Department or Department representative.

B. The personnel file for each substitute must contain all required information before the substitute can be placed at a child care facility.

~~**7.730.4 ADMINISTRATIVE**~~

2.811~~7.730.41~~ ADMINISTRATIVE RECORDS AND REPORTS

A. The following records must be on file at the Agency:

1. A list of current substitutes, and substitute placements;

2. Reports from contracted child care facilities where any incident reports occur;~~.~~

3. Contracts with both substitutes and child care facilities; and~~.~~

4. Within thirty (30) calendar days of the last day of employment, staff members must be provided a letter verifying their experience at the Agency. The letter must contain the Agency's address, phone number and license number, the employee's start and end date and the total number of hours worked with children. Hours worked with infants and toddlers must be documented separately from hours worked with other age groups. The letter must be signed by a director, owner or human resources agent of the Agency.

~~7.730.3~~ HEALTH AND SAFETY

2.812~~7.730.31~~ CONTROL OF COMMUNICABLE ILLNESSES

A. When a substitute has worked in a child care facility where there has been an increase in or outbreak of communicable illness among staff, or children the substitute must immediately notify the Agency. Individuals' confidentiality must be maintained.

B. The substitute placement agency must have a written agreement with the child care facility which requires the child care facility to:

a. Notify the Agency of an increase of illness or outbreak at the time the placement will occur.

b. Notify the Agency of any substitute exposed to a communicable illness at a child care facility, and, the Agency must be notified within twenty-four (24) hours.

C. When the substitute placement agency has been notified that a substitute has been in a placement where the individual has been exposed to a communicable illness, the Agency and the substitute must consult with and comply with all Health Department requirements before being placed at another facility.

HISTORY

Editor's Notes

Rules in 8 CCR 1402-1 were re-adopted from 12 CCR 2509-8.

New Rules 2.100-2.131, eff. 12/30/2023.

New Rules 2.200-2.242, eff. 12/30/2023.

New Rules 2.400-2.424, eff. 12/30/2023.

New Rules 2.500-2.527, eff. 12/30/2023.

New Rules 2.600-2.617, eff. 12/30/2023.

New Rules 2.800-2.812, eff. 12/30/2023.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger - CDEC Carin Rosa	Email(s):Amanda.Schoniger@state.co.us Carin.Rosa@state.co.us
Program/Division: DELLA / General	CDEC Tracking No.: 2023-05-005
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other If there are "Multiple/Other" reasons, please explain: This rule package includes renumbering of rules moving from the Colorado Department of Human Services (CDHS) rules to new Colorado Department of Early Childhood (CDEC) rules.
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulation for these child care programs.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 24-4-101, 26.5-1-101, 26.5-1-105(1), and 26.5-5-301, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:
Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	☐ Mandatory ☑ Discretionary

	(E) Effective Date: (P) Effective Date: 10/15/2023 (E) Termination Date:
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Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	

☐	Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.
☐	Decrease duplication and conflicts with implementing programs and providing services.
☐	Increase equity in access and outcomes to programs and services for children and families.
☑	Increase administrative efficiencies among programs and services provided by the department.
☑	Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: The Department sent an email to all stakeholders with a link requesting written comments on these proposed rules. The request period for public feedback was also posted on our "Public Notices" webpage for seven (7) days, between June 29, 2023, through July 6, 2023. The program responded to all comments received, and incorporated feedback into the proposed rules, where possible. Link to the Public Folder for the DELLA General Licensing rules that contains the proposed rules and written comments.
Assistant Attorney General Review:	07/14/2023 - 08/24/2023
RAC County Subcommittee Review Date (if required):	09/7/2023
Rules Advisory Council (RAC) Review Date:	09/14/2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	09/25/2023

Regulatory and Cost Benefit Analysis

1. **Community Impact:** Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

   Licensed Family Child Care Homes, Child Care Facilities, School Age Child Care, Substitute Placement Agencies, Neighborhood Youth Organizations, and Children's Resident Camps are governed by these rules. These programs bear the cost and benefit from these rules. These rules were previously

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

promulgated through the State Board of Human Services, and licensed child care facilities are currently regulated by these rules.

With the creation of the Department of Early Childhood, The Division of Early Learning Licensing and Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service to the new Department of Early Childhood. These rule revisions update rule numbering and statutory references, and are required to transfer the rules to the new Department.

The Department will translate the adopted rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance of these rules will also be translated into Spanish.

2. **Quality and Quantity:** Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).

   There are no qualitative or quantitative changes that would result from implementation of these proposed rules. These rule revisions are technical in nature, and are required to transfer the rules to the new Department.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

   There are no economic benefits or disadvantages to implementation of these proposed rules. These rule revisions are technical in nature, and are required to transfer the rules to the new Department.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate “not applicable.”

Department	Not applicable. There are no costs to the Department for implementing these rules.
Local Governments/ Counties	Not applicable. There is nothing in this rule revision that creates additional costs for county departments.
Providers	Not applicable. There are no additional costs for providers to transfer these rules to the new Department.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	Not applicable. There are no additional costs for community partners to transfer these rules to the new Department.

Other State Agencies	Not applicable. There are no associated costs for other state agencies.
Tribal Communities	Not applicable. There are no associated costs for Tribal Communities.

5. **Evaluation:** How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

These rules were previously promulgated by the State Board of Human Services and licensed child care facilities are currently regulated by these rules. The Department will continue to annually monitor programs for compliance with these regulations.

6. **Comparative Analysis:** Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

a. The Department considered leaving the rules as already promulgated, but is required to transfer/readopted these rules from the Colorado Department of Human Services to the Department of Early Childhood.

b. The Department considered seeking legislative changes to reflect some of the requirements in this proposed rule, but later determined the Executive Director's rulemaking authority supports the recommended changes. In addition it is required that the Department move these rules to the Department of Early Childhood.

7. **Comparative Analysis:** Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

No, with the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions make updates to the rule numbering and statutory references, which are technical in nature.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger / Carin Rosa	Email(s):Amanda.Schoniger@state.co.us, Carin.Rosa@state.co.us
Program/Division: DELLA / Child Care Centers	CDEC Tracking No.: 2023-06-012
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other If there are "Multiple/Other" reasons, please explain: This rule package includes renumbering of rules moving from the Colorado Department of Human Services (CDHS) rules to new Colorado Department of Early Childhood (CDEC) rules.
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Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:
Effective Date(s) of proposed rule or amendment(s):	☐ Mandatory ☑ Discretionary

(Emergency/Permanent)	(E) Effective Date: N/A (P) Effective Date: 10/15/2023 (E) Termination Date: N/A
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☐ Yes ☑ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	

☐	Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.
☐	Decrease duplication and conflicts with implementing programs and providing services.
☐	Increase equity in access and outcomes to programs and services for children and families.
☑	Increase administrative efficiencies among programs and services provided by the department.
☑	Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: Communications request through CDEC to email all stakeholders with a link to provide public comment. Public comment feedback posted for 7 days. Responding to all comments received during the 7 days. Updating rules to incorporate public comments if necessary. Request for public comment sent out Jun 29, 2023 through Jul 6, 2023. Public Comment: Proposed changes to General Rules for Child Care Fac... 2.200 Center Rules Public Comment.docx Location of public folder containing stakeholder engagement materials for public retention: (link)  https://docs.google.com/document/d/1-yLSWkWAf1Wq5hBrkfPTQ4IYVuiWV8yz/edit?usp=drive_link&ouid=116765918166538977081&rtpof=true&sd=true 2.200 Child Care Centers Public Comment (Responses) 12 - DELLA Centers: CDEC No. 2023-06-012
Assistant Attorney General Review:	7/25/2023 - 9/6/2023
RAC County Subcommittee Review Date (if required):	Not Applicable

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Rules Advisory Council (RAC) Review Date:	9/14/2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	9/29/2023

Regulatory and Cost Benefit Analysis

1. **Community Impact: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?**

   Child Care Facilities bear the cost and benefit from these rules. These rules were previously promulgated through the State Board of Human Services and licensed Substitute Placement Agencies are currently required to follow these rules.

   With the creation of the Department of Early Childhood, The Division of Early Learning Licensing and Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, and make technical corrections only.

   The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

2. **Quality and Quantity: Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).**

   These rule revisions incorporate Department of Early Childhood rule numbering, align with state and federal statute changes, and make technical corrections only. These changes must be incorporated to renumber rules consistent with the move to the Department of Early Childhood and comply with state and federal statute.

3. **Potential Economic Benefits/Disadvantages: What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?**

   There are no economic benefits or disadvantages to implementation of these proposed rules. These rule revisions are technical in nature, and are required to transfer the rules to the new Department, and comply with state and federal statute.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."

Department	Not applicable. There are no costs to the Department for implementing these rules.

Local Governments/ Counties	Not applicable. There is nothing in this rule revision that creates additional costs for county departments.
Providers	Licensed child care centers are governed by these rules and will both benefit from and bear the burden of these rules. There will be minimal cost to child care providers as the additions to the package are training requirements in compliance with State and Federal Statutes. Training is available for free online in the Professional Development Information System. Programs will only bear the cost of paying individuals for time to complete training if the individuals do not meet the requirement by having previously completed training. Licensed child care centers and child care professionals will benefit from the expanded qualification options proposed in this rule package.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	Not applicable. There are no additional costs for community partners to transfer these rules to the new Department.
Other State Agencies	Not applicable. There are no associated costs for other state agencies.
Tribal Communities	Not applicable. There are no associated costs for Tribal Communities.

5. <u>Evaluation</u>: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

These rules were previously promulgated through the State Board of Human Services and licensed child care centers are currently required to follow these rules. The Department will continue to annually monitor programs for compliance with these regulations.

6. <u>Comparative Analysis</u>: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

a. The Department considered leaving the rules as already promulgated, but is required to transfer/readopted these rules from the Colorado Department of Human Services to the Department of Early Childhood.

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COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger, Carin Rosa	Email(s):Amanda.Schoniger@state.co.us Carin.Rosa@state.co.us
Program/Division: DELLA / Resident Camps	CDEC Tracking No.: 2023-05-006
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

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Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	☐ Mandatory ☑ Discretionary (E) Effective Date: (P) Effective Date: 10/15/2023

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Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
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Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: The Department sent an email to all stakeholders with a link requesting written comments on these proposed rules. The request period for public feedback was also posted on our "Public Notices" webpage for seven (7) days, between June 29, 2023, through July 6, 2023. The program responded to all comments received, and incorporated feedback into the proposed rules, where possible. Link to the Public Folder for the DELLA Resident Camp rules that contains the proposed rules and written comments.
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RAC County Subcommittee Review Date (if required):	09/07/2023
Rules Advisory Council (RAC) Review Date:	09/14/2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	09/25/2023

Regulatory and Cost Benefit Analysis

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These rules were previously promulgated through the State Board of Human Services and licensed Children's Resident Camps are currently required to follow these rules.

With the creation of the Department of Early Childhood, The Division of Early Learning Licensing and Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, and make technical corrections only.

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4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."

Department	Not applicable. There are no costs to the Department for implementing these rules.
Local Governments/ Counties	Not applicable. There is nothing in this rule revision that creates additional costs for county departments.
Providers	Not applicable. There are no additional costs for providers to transfer these rules to the new Department.
Community Partners	

(e.g., School Districts, Early Childhood Councils, etc.)	Not applicable. There are no additional costs for community partners to transfer these rules to the new Department.
Other State Agencies	Not applicable. There are no associated costs for other state agencies.
Tribal Communities	Not applicable. There are no associated costs for Tribal Communities.

5. **Evaluation:** How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

These rules were previously promulgated through the State Board of Human Services and licensed facilities are currently required to follow these rules. The Department will continue to annually monitor programs for compliance with these regulations.

6. **Comparative Analysis:** Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

a. The Department considered leaving the rules as already promulgated, but is required to transfer/readopted these rules from the Colorado Department of Human Services to the Department of Early Childhood.

b. The Department considered seeking legislative changes to reflect some of the requirements in this proposed rule, but later determined the Executive Director's rulemaking authority supports the recommended changes. In addition it is required that the Department move these rules to the Department of Early Childhood.

7. **Comparative Analysis:** Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

No, with the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions make updates to the rule numbering and statutory references, which are technical in nature.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger, Carin Rosa	Email(s): Amanda.Schoniger@state.co.us, Carin.Rosa@state.co.us
Program/Division: DELLA / School Aged Programs	CDEC Tracking No.: 2023-06-011
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other If there are "Multiple/Other" reasons, please explain: If there are "Multiple/Other" reasons, please explain: This rule package includes renumbering of rules moving from the Colorado Department of Human Services (CDHS) rules to new Colorado Department of Early Childhood (CDEC) rules.
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulation for these child care programs.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 24-4-101, 26.5-1-101, 26.5-1-105(1), and 26.5-5-301, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:

Effective Date(s) of proposed rule or amendment(s): (**E**mergency/**P**ermanent)	☐ Mandatory ☑ Discretionary (E) Effective Date: N/A (P) Effective Date: 10/15/2023 (E) Termination Date: N/A
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☑ Yes ☐ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	☐ Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services. ☐ Decrease duplication and conflicts with implementing programs and providing services. ☐ Increase equity in access and outcomes to programs and services for children and families. ☑ Increase administrative efficiencies among programs and services provided by the department.

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

	☑ Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: The Department sent an email to all stakeholders with a link requesting written comments on these proposed rules. The request period for public feedback was also posted on our "Public Notices" webpage for seven (7) days, between June 29, 2023, through July 6, 2023. The program responded to all comments received, and incorporated feedback into the proposed rules, where possible. Link to the Public Folder for the DELLA School Aged Program Rules rules that contains the proposed rules and written comments.
Assistant Attorney General Review:	7/21/2023 - 9/6/2023
RAC County Subcommittee Review Date (if required):	Not Applicable
Rules Advisory Council (RAC) Review Date:	9/14/2023
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Regulatory and Cost Benefit Analysis

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

1. **<u>Community Impact</u>: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?**

Licensed School Age Child Care bears the cost and benefit from these rules. These rules were previously promulgated through the State Board of Human Services, and licensed School Aged Programs are currently required to follow these rules.

With the creation of the Department of Early Childhood, The Division of Early Learning Licensing and Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, and make technical corrections only.

The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

2. **<u>Quality and Quantity</u>: Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).**

There are no qualitative or quantitative changes that would result from implementation of these proposed rules. These rule revisions are technical in nature, and are required to transfer the rules to the new Department.

3. **<u>Potential Economic Benefits/Disadvantages</u>: What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?**

There are no economic benefits or disadvantages to implementation of these proposed rules. These rule revisions are technical in nature, and are required to transfer the rules to the new Department.

4. **<u>Fiscal Impacts</u>: What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."**

Department	Not applicable. There are no costs to the Department for implementing these rules.
Local Governments/ Counties	Not applicable. There is nothing in this rule revision that creates additional costs for county departments.
Providers	Licensed school age child care centers are governed by these rules and will both benefit from and bear the burden of these rules. There will be minimal cost to child care providers as the additions to the package are training requirements in compliance with State and Federal Statutes.

	Training is available for free online in the Professional Development Information System. Programs will only bear the cost of paying individuals for time to complete training if the individuals do not meet the requirement by having previously completed training. Licensed child care centers and child care professionals will benefit from the expanded qualification options proposed in this rule package.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	Not applicable. There are no additional costs for community partners to transfer these rules to the new Department.
Other State Agencies	Not applicable. There are no associated costs for other state agencies.
Tribal Communities	Not applicable. There are no associated costs for Tribal Communities.

5. Evaluation: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

These rules were previously promulgated through the State Board of Human Services and licensed facilities are currently required to follow these rules. The Department will continue to annually monitor programs for compliance with these regulations.

6. Comparative Analysis: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

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COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger, Carin Rosa	Email(s):Amanda.Schoniger@state.co.us, Carin.Rosa@state.co.us
Program/Division: DELLA / Special Activities	CDEC Tracking No.: 2023-06-010
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

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Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulation for these child care programs.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 24-4-101, 26.5-1-101, 26.5-1-105(1), and 26.5-5-301, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
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Effective Date(s) of proposed rule or amendment(s):	☐ Mandatory ☑ Discretionary

(Emergency/Permanent)	(E) Effective Date: N/A (P) Effective Date: 10/15/2023 (E) Termination Date: N/A
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☐ Yes ☑ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	

☐	Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.
☐	Decrease duplication and conflicts with implementing programs and providing services.
☐	Increase equity in access and outcomes to programs and services for children and families.
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☑	Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

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Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: The Department sent an email to all stakeholders with a link requesting written comments on these proposed rules. The request period for public feedback was also posted on our "Public Notices" webpage for seven (7) days, between June 29, 2023, through July 6, 2023. The program responded to all comments received, and incorporated feedback into the proposed rules, where possible. Link to the Public Folder for the DELLA Special Activities rules that contains the proposed rules and written comments.
Assistant Attorney General Review:	7/21/2023 - 9/6/2023
RAC County Subcommittee Review Date (if required):	Not Applicable
Rules Advisory Council (RAC) Review Date:	9/14/2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	9/29/2023

Regulatory and Cost Benefit Analysis

1. **Community Impact: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations,**

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such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

These rules were previously promulgated through the State Board of Human Services and licensed programs participating in special activities are currently required to follow these rules.

With the creation of the Department of Early Childhood, The Division of Early Learning Licensing and Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, and make technical corrections only.

The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

2. <u>Quality and Quantity</u>**: Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).**

There are no qualitative or quantitative changes that would result from implementation of these proposed rules. These rule revisions are technical in nature, and are required to transfer the rules to the new Department.

3. <u>Potential Economic Benefits/Disadvantages</u>**: What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?**

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4. <u>Fiscal Impacts</u>**: What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."**

Department	Not applicable. There are no costs to the Department for implementing these rules.
Local Governments/ Counties	Not applicable. There is nothing in this rule revision that creates additional costs for county departments.
Providers	Not applicable. There are no additional costs for providers to transfer these rules to the new Department.
Community Partners (e.g., School Districts, Early	Not applicable. There are no additional costs for community partners to transfer these rules to the new Department.

Childhood Councils, etc.)	
Other State Agencies	Not applicable. There are no associated costs for other state agencies.
Tribal Communities	Not applicable. There are no associated costs for Tribal Communities.

5. <u>Evaluation</u>: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

These rules were previously promulgated through the State Board of Human Services and licensed facilities are currently required to follow these rules. The Department will continue to annually monitor programs for compliance with these regulations.

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COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger, Carin Rosa	Email(s): Amanda.Schoniger@state.co.us, Carin.Rosa@state.co.us
Program/Division: DELLA / Substitute Placement	CDEC Tracking No.: 2023-06-009
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other If there are "Multiple/Other" reasons, please explain: This rule package includes renumbering of rules moving from the Colorado Department of Human Services (CDHS) rules to new Colorado Department of Early Childhood (CDEC) rules.
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Statutory Authority: (Include Federal Authority, if applicable)	Sections 24-4-101, 26.5-1-101, 26.5-1-105(1), and 26.5-5-301, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
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Effective Date(s) of proposed rule or amendment(s):	☐ Mandatory ☑ Discretionary

(Emergency/Permanent)	(E) Effective Date: N/A (P) Effective Date: 10/15/2023 (E) Termination Date: N/A
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Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
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Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	

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Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
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Assistant Attorney General Review:	7/21/2023 - 9/6/2023
RAC County Subcommittee Review Date (if required):	Not Applicable
Rules Advisory Council (RAC) Review Date:	09/14/2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	09/29/2023

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1. **Community Impact: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations,**

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such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Licensed Substitute Placement Agencies bear the cost and benefit from these rules. These rules were previously promulgated through the State Board of Human Services and licensed Substitute Placement Agencies are currently required to follow these rules.

With the creation of the Department of Early Childhood, The Division of Early Learning Licensing and Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, and make technical corrections only.

The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

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These rule revisions incorporate Department of Early Childhood rule numbering, align with state and federal statute changes, and make technical corrections only. These changes must be incorporated to renumber rules consistent with the move to the Department of Early Childhood and comply with state and federal statute.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

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4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."

Department	Not applicable. There are no costs to the Department for implementing these rules.
Local Governments/ Counties	Not applicable. There is nothing in this rule revision that creates additional costs for county departments.
Providers	Licensed Substitute Placement Agencies are governed by these rules and will both benefit from and bear the burden of these rules. There will be minimal cost to child care providers as the additions to the package are training requirements in compliance with State and Federal Statutes. Training is available for free online in the Professional Development Information System. Programs will only bear the cost of paying individuals

	for time to complete training if the individuals do not meet the requirement by having previously completed training. Licensed child care centers and child care professionals will benefit from the expanded qualification options proposed in this rule package.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	Not applicable. There are no additional costs for community partners to transfer these rules to the new Department.
Other State Agencies	Not applicable. There are no associated costs for other state agencies.
Tribal Communities	Not applicable. There are no associated costs for Tribal Communities.

5. Evaluation: **How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).**

These rules were previously promulgated through the State Board of Human Services and licensed facilities are currently required to follow these rules. The Department will continue to annually monitor programs for compliance with these regulations.

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Notice of Proposed Rulemaking

Tracking number

2023-00611

Department

1400 - Department of Early Childhood

Agency

1403 - Colorado Child Care Assistance Program

CCR number

8 CCR 1403-1

Rule title

COLORADO CHILD CARE ASSISTANCE PROGRAM RULES AND REGULATIONS

Rulemaking Hearing

Date

10/27/2023

Time

10:00 AM

Location

Webinar Only: https://us02web.zoom.us/meeting/register/tZUpf-yprz0tGtEr5OhRvoKmvfLqXaRAlmNY

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Executive Director to consider adopting revisions to the Colorado Child Care Assistance Program's (CCCAP) rules to update the Federal Poverty Guidelines and State Median Income, address concerns raised from the Office of Legislative Legal Services (OLLS), and provide a general cleanup of rule language for added clarity.

Statutory authority

Sections 26.5-1-105(1), 26.5-4-111(1) and (14), and 24-4-103, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Rulemaking & Rules Advisory Council Administrator

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COLORADO DEPARTMENT OF EARLY CHILDHOOD

Colorado Child Care Assistance Program

COLORADO CHILD CARE ASSISTANCE PROGRAM RULES AND REGULATIONS

8 CCR 1403-1

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

3.100 ~~COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)~~AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 ~~*et seq.*~~through 24-4-204, (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, Title 26.5 of the C.R.S. ~~sections 26.5-1-101 *et seq.*~~ (the "Early Childhood Act"), C.R.S., and the Colorado Child Care Assistance Program Act, sections 26.5-4-101 through 26.5-4-119, C.R.S.

3.101 ~~CCCAP MISSION AND APPROPRIATIONS~~SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures of licensed child care providers participating in the Colorado Child Care Assistance Program (CCCAP).

~~A. Mission~~

The purpose of CCCAP is to provide eligible households with access to high quality, affordable child care that supports healthy child development and school readiness while promoting household self-sufficiency and informed child care choices.

3.102 ~~PROGRAM FUNDING~~APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed child care providers participating in the Colorado Child Care Assistance Program, which is regulated by the Colorado Department of Early Childhood.~~COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)~~

3.103 DEFINITIONS

A. "Accused individual" means:

1. An adult caretaker, teen parent, or child care provider who is being accused of committing fraud or a fraudulent criminal act; or

2. An adult caretaker or teen parent who is being accused of committing an Intentional Program Violation.

B. "Additional care needs" means a child who has a physical and/or mental disability and needs a higher level of care on an individualized basis than that of his/her peers at the same age; or, who is under court supervision, including a voluntary out-of-home placement prior to or subsequent to a petition review of the need for placement (PRNP), and who has additional care needs identified by an individual health care plan (IHCP), individual education plan (IEP), physician's/professional's statement, child welfare, or individualized family service plan (IFSP).

C. "Adult caretaker" means a person in the home who is financially contributing to the welfare of the child and is the parent, adoptive parent, step-parent, legal guardian, or person who is acting in "loco parentis" and has physical custody of the child during the period of time child care is being requested.

D. "Adverse action" means any action by the counties or their designee which adversely affects the adult caretaker or teen parent's eligibility for services, or the Child Care Provider's right to payment for services provided and authorized under the CCCAP.

E. "Affidavit" means a voluntary written declaration reflecting the personal knowledge of the declarant.

F. "Applicant" means the adult caretaker(s) or teen parent(s) who sign(s) the application form and/or the redetermination form.

G. "Application" is a Department-approved form that may include, but is not limited to:

1~~A~~. An original Department-prescribed low-income child care application, which is the first application for the CCCAP filed by the adult caretaker(s) or teen parent; or

2~~B~~. At the option of the county, any application for another public assistance program.

H. "Application date" means the date that the county receives the signed application.

I. "Application date for pre-eligibility determinations" means the date that the application is received from the Child Care Provider or Applicant by the county. ~~Required supporting documents may be submitted up to thirty (30) days after receipt of the signed application.~~

J. "Application process" means all of the following:

1~~A~~. The Department-prescribed, signed low-income child care application form completed by the adult caretaker or teen parent ~~or their authorized representative~~, which includes appeal rights; or~~,~~ any application from another public assistance program. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the Head Start program;

2~~B~~. The required verification supporting the information declared on the application form; and

3~~C~~. As a county option, an orientation or interview for new applicants may be required. Counties shall ensure that, if the county chooses to incorporate an orientation or interview into their application process, the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

K. "Assets" include but are not limited to the following:

1~~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 rule section 3.111(H)(3). ~~the rule section titled "nonrecurring lump sum payments."~~

2~~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). Primary home and automobile of the primary caretakers are excluded.

L. "Attestation of mental competence" means a signed statement from a Qualified Exempt Child Care Provider declaring that no one in the home where the care is provided has been determined to be insane or mentally incompetent by a court of competent jurisdiction; or specifically that the mental incompetence or insanity is not of such a degree that the individual cannot safely operate as a Qualified Exempt Child Care Provider.

M. "Attendance tracking system (ATS)" means the system used by adult caretakers, teen parents, or another individual delegated by the adult caretaker or teen parent to access benefits and to record child attendance for the purposes of paying for authorized and provided child care.

N. "Authorization" or "Authorized care" means the amount and length of time a child is eligible to receive care by licensed or qualified exempt child care providers to whom social/human services will authorize payment.

O. "Authorization start date" means the date from which payments for child care services are eligible to be paid by the county.

P. "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 do not include absences, holidays, registration fees, activity fees, and/or transportation fees.

Q. "Basic education" is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is in high school education programs working towards a high school diploma or high school equivalency; Adult Basic Education (ABE); and/or~~,~~ English as a Second Language (ESL).

R. "Cash assistance" means payments, vouchers, and other forms of benefits designed to meet a household's ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Cash assistance may include supportive services to households based on the assessment completed. All state diversion payments of less than four (4) consecutive months are not cash assistance. For the purpose of child care, county diversion payments are not cash assistance.

S. "Child care authorization notice" means a ~~state~~ Department~~-~~prescribed form which authorizes the purchase of child care and includes the children authorized for care. The authorization notice will be given to the adult caretaker(s) or teen parent(s) and applicable child care provider(s) in order to serve as notice to the adult caretaker(s) or teen parent(s), and child care provider(s) of approval or change of child care services. Colorado's child care authorization notice(s) are vouchers for the purposes of the CCCAP.

T. "CHATS" means the Child Care Automated Tracking System.

U. "Child care provider" means a child care provider licensed pursuant to Part 3 of Article 5 of Title 26.5 that has an agreement or enrollment contract to participate in CCCAP.

V. "Child Care Resource and Referral Agencies" (CCR&R) means agencies or organizations available to assist individuals in the process of choosing child care providers.

W. "Child care staff" or "child care technician" means individuals who are designated by counties or their designees to administer all, or a portion of, the CCCAP and includes, but is not limited to, workers whose responsibilities are to refer children for child care assistance, determine eligibility, authorize care, process billing forms, and issue payment for child care ~~subsidies~~benefits.

X. "Child Welfare Child Care" means a child care component within CCCAP where less than twenty-four (24) hour child care assistance is needed to maintain children in their own homes or in the

least restrictive out-of-home care when there are no other child care options available. See rule manual Volume 7, rule section 7.302, Child Welfare Child Care (12 CCR 2509-4). (June 1Mar. 3, 2023)., The entirety of Volume 7 is herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

Y. "Citizen/legal resident" means a citizen of the United States, current legal resident of the United States, or a person lawfully present in the United States pursuant to Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193; and Federal Register notices 62 Fed. Reg. 61344 (Nov. 17, 1997) and 63 Fed. Reg. 41658 (Aug. 4, 1998). Herein incorporated by reference. No later amendments or editions are incorporated. These documents are available at no cost from the Office of the Federal Register at: 7 G Street, NW, Ste. A-734, Washington, D.C. 20401, or at https://www.federalregister.gov/. These documents are also available for inspection and copying at the Colorado Department of Early Childhood (CDEC), 710 S. Ash Street, Bldg. C, Denver, Colorado 80246. Since the child is the beneficiary of child care assistance, the citizen/legal resident requirement only applies to the child who is being considered for assistance.

Z. "Clear and convincing" means proof that is stronger than a preponderance of the evidence and is unmistakable or free from serious or substantial doubt.

AA. "Colorado Child Care Assistance Program" or "CCCAP" means the public assistance program for child care known as the Colorado Child Care Assistance Program established in Part 1 or Article 4 of Title 26.5. CCCAP is administered by the Department and provides child care subsidies benefits to households in the following programs: Low-Income Child Care, Colorado Works Child Care, Protective Services Child Care, and Child Welfare Child Care. The DepartmentCDEC is responsible for the oversight and coordination of all child care funds and services.

BB. "Colorado Works Program" is the program administered by the Colorado Department of Human Services in Part 7 of Article 2 of Title 26. Colorado Works is Colorado's Temporary Assistance for Needy Families (TANF) program that provides public assistance to households in need. The Colorado Works program is designed to assist adult caretaker(s) or teen parent(s) in becoming self-sufficient by strengthening the economic and social stability of households.

CC. "Colorado Works Child Care" means a child care component within CCCAP for Colorado Works households with an adult caretaker or teen parent who have been referred for child care by the county Colorado Works worker and are determined work eligible per Colorado Works Program rules located at 9 CCR 2503-6 (June 1Aug. 30, 20232), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us/ccr. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

DD. "Colorado Works households" means members of the same Colorado Works household who meet requirements of the Colorado Works program, through receipt of basic cash assistance or state diversion payments while working toward achieving self-sufficiency through eligible work activities and eventual employment where the adult caretaker(s) or teen parent(s) is included in the assistance unit, as defined in The Colorado Works Program Rules (9 CCR 2503-6), incorporated by reference in subsection (BB) of this rule section 3.103.

EE. "Collateral Contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted, or by telephone.

FF. "Confirmed abuse or neglect" means any report of an act or omission that threatens the health or welfare of a child that is found by a court, law enforcement agency, or entity authorized to investigate abuse or neglect to be supported by a preponderance of the evidence.

GG. "Consumer Education" means information provided to adult caretaker(s) or teen parent(s), child care providers, and the general public that will promote informed child care choices; information on access to other programs in which families may be eligible; and, information on developmental screenings.

~~FF. "Cooperation with Child Support Services (county option)" means applying for Child Support Services for all children who are in need of care and have an absent parent, within thirty (30) calendar days of the completion and approval of the CCCAP application and maintaining compliance with Child Support Services case unless a good cause exemption exists. The county IV-D administrator or designee determines cooperation with Child Support Services.~~

HH. "County or Counties" means the county departments of social/human services.

II. "Department" means the Colorado Department of Early Childhood.

JJ. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to fire, flood, earthquake, wind, storm, wave action, hazardous substance incident, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air pollution, blight, drought, infestation, explosion, civil disturbance, hostile military or paramilitary action, or a condition of riot, insurrection, or invasion existing in the state or in any county, city, town, or district in the state.

KK. "Discovery" means that a pertinent fact related to CCCAP eligibility was found by the county to exist.

LL. "Drastic economic change" means an economic impact on the county or state that has a strong or far-~~-~~reaching effect on the CCCAP.

MM. "Drop in day" means a county-determined number of days that will generate an approval and payment for care utilized outside of the standard authorization.

NN. "Early care and education provider" means a school district or child care provider pursuant to section 26.5-4-103(4), C.R.S.

OO. "Eligible activity," for the purpose of Low-Income Child Care, means the activity in which the t~~T~~een parent(s) or adult caretaker(s) are involved. This may include job search; employment; self-employment; training; basic education; or, post-secondary education. For t~~T~~een parents, training and teen parent education are approved activities for all counties.

PP. "Eligible child" means a child, from birth to the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for themselves or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s). Any child served through the Colorado Works program or the Low-Income Child Care program must ~~shall~~ be a citizen/legal resident.

QQ. "Emergency" means an unexpected event that places life or property in danger and requires an immediate response through the use of state and community resources and procedures.

RR. "Employment" is a Low-Income Child Care eligible activity where the adult caretaker or teen parent is holding a part-time or full-time job for which wages, salary, in-kind income or commissions are received.

SS. "Enrollment freeze" or "freeze" means when a county ceases enrollment of individuals due to being overspent or being projected to overspend.

TT. "Entry income eligibility level" means the level set by the Department for each county above which an adult caretaker(s) or teen parent(s) is not eligible at original application.

UU. "Equivalent full-time units" mean all part-time units times a factor of .55 to be converted to full-time units. The full-time equivalent units added to the other full-time units shall be less than thirteen (13) in order to be considered part-time for parent fees.

VV. "Exit income eligibility level" is the income level at the twelve (12) month re-determination of eligibility above which the county may deny continuing eligibility and is eighty-five percent (85%) of the Colorado state median income as outlined in rule section 3.1105.1(H).

WW. "Fair market value" means the median resale market value an item or service.

XX. "Families experiencing homelessness" means families who lack a fixed, regular, and adequate nighttime residence and at least one of the following:

1A. Children who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters;

2B. Children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

3C. Children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

4D. Migratory children who qualify as experiencing homelessness for the purposes of these rules because the children are living in circumstances described in this definition (1)A through (3)C, of this rule subsection.

YY. "Federal poverty level" (FPL) or "federal poverty guidelines" (FPG) refers to figures set by the Department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in rule section 3.1105.1.(H).(2).

ZZ. "Fingerprint-based criminal background check" means a complete set of fingerprints for the qualified exempt provider and anyone eighteen (18) years of age and older residing in the qualified exempt provider's home; or, for the qualified exempt provider if care is provided in the child's home, taken by a qualified law enforcement agency, and submitted to the Colorado Department of Early Childhood, Division of Early Learning Access and Quality, for subsequent submission to the Colorado Bureau of Investigations (CBI). The individual(s) will also be required to submit a background check with the Federal Bureau of Investigation (FBI). Costs for all investigations are the responsibility of the person whose fingerprints are being submitted unless noted otherwise in the county's plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families, per rule section 3.13015.1.

AAA. "Fiscal ~~A~~agreement" means a Department-approved agreement between counties or their designees and child care provider(s), which defines the maximum rate possible based on county ceiling rates and quality rating tiers, defines provider rights and responsibilities, and defines responsibilities of the counties or their designees to the child care provider(s). The fully executed fiscal agreement includes noticing of county ceiling rates as well as a copy of the provider's CCCAP reimbursement rates. Fiscal agreements must be:

1~~A~~. One (1) year in length for qualified exempt child care providers

2~~B~~. Three (3) years in length for licensed child care providers

BBB. "Fraud/Fraudulent criminal act" means an adult caretaker(s), teen parent(s), or child care provider who has secured, attempted to secure, or aided or abetted another person in securing public assistance to which the adult caretaker(s) or teen parent(s) was not eligible by means of willful misrepresentation/withholding of information or intentional concealment of any essential facts. Fraud is determined as a result of any of the following:

1~~A~~. Obtaining a "waiver of intentional program violation~~;~~";

2~~B~~. An administrative disqualification hearing; or

3~~C~~. Civil or criminal action in an appropriate state or federal court.

CCC. "Funding concerns" means a determination by the Department or a county that actual or projected expenditures indicate a risk of overspending of that county's available CCCAP allocation in a current fiscal year.

DDD. "Head Start" means a program operated by a local public or private nonprofit agency designated by the Federal Department of Health and Human Services to operate a head start program pursuant to the provisions of Title V of the Federal "Economic Opportunity Act of 1964", as amended.

EEE. "High-quality early childhood program" means a program operated by a child care provider with a fiscal agreement through CCCAP~~;~~ and, that is in the top three levels of the ~~Department's~~ state's quality rating and improvement system, is accredited by a Department-approved accrediting body, or is an ~~E~~early ~~H~~head ~~S~~start or ~~H~~head ~~S~~start program that meets federal standards.

FFF. "Hold slots" means a county determined number of days when payment is allowed for unused care that is in addition to absences, holidays, and school breaks. Hold slots are intended to hold a child's slot with a provider due to extended absence from care.

GGG. "Household" includes: all children in the home who are under eighteen (18) years of age; all children under nineteen (19) years of age who are still in high school and the responsibility of the adult caretaker(s); and the adult caretaker(s) or teen parent(s).

HHH. "In loco parentis" means a person who is assuming the parent obligations for a child, including protecting their rights and/or a person who is standing in the role of the parent of a child without having gone through the formal adoption process. Parent obligations include, but are not limited to, attending parent teacher conferences, regularly picking up and dropping children at child care, and regularly taking the child to doctor appointments.

III. "Incapacitated" means a physical or mental impairment which substantially reduces or precludes the adult caretaker or teen parent from providing care for his/her child(ren) and participating in a Low-Income Child Care eligible activity. Such a condition shall be documented by a physician's

statement or other medical verification which establishes a causal relationship between the impairment and the ability to provide child care.

JJJ. "Income eligibility" means that eligibility for child care ~~subsidies~~ benefits is based on and determined by measuring the countable household income and size against eligibility guidelines.

KKK. "Inconsistent" means the information provided is unclear or conflicting or the county has reason to believe the facts presented are contrary to the information provided by the adult caretaker(s) or teen parent(s).

LLL. "Intentional Program Violation (IPV)" means an act committed by an adult caretaker(s) or teen parent(s) who has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts for the purpose of establishing or maintaining a Colorado Child Care Assistance Program household's eligibility to receive benefits for which they were not eligible; or has committed or intended to commit any act that constitutes a violation of the child care assistance program regulations or any state statute related to the use or receipt of CCCAP benefits for the purpose of establishing or maintaining the household's eligibility to receive benefits.

MMM. "Involuntarily out of the home" means when an adult caretaker or teen parent is out of the home due to circumstances beyond his/her immediate control to include, but not be limited to, incarceration, resolution of immigration issues, and/or restraining orders.

NNN. "Job search" is a Low-Income Child Care eligible activity where an adult caretaker or a teen parent is actively seeking employment.

OOO. "Low-Income Program" or "Low-Income Child Care" means a child care component within CCCAP for households with an adult caretaker(s) or teen parent(s) who is/are in a low-income eligible activity, income eligible, and not receiving Colorado Works, Child Welfare, or Protective Services child care.

PPP. "Manual Claim" means the child care provider's process of invoicing the county using the Department-prescribed manual claim form for reimbursements that were not processed automatically through CHATS including but not limited to:

1~~A~~. Care that was authorized and provided;

2~~B~~. Reimbursable registration fees;

3~~C~~. Reimbursable activity fees;

4~~D~~. Reimbursable transportation fees;

5~~E~~. Reimbursable hold slots;

6~~F~~. Reimbursable drop in days; and

7~~G~~. Reimbursable absence payments.

QQQ. "Maternity and/or paternity leave" is a temporary period of absence from the adult caretaker or teen parent's Low-Income Child Care eligible activity that is granted to expectant or new mothers and/or fathers for the birth and care of a newborn child.

RRR. "Medical leave" means a temporary period of absence from the adult caretaker or teen parent's Low-Income Child Care eligible activity that is granted due to a personal illness or injury, or to care for a family member that is not related to maternity/paternity leave.

SSS. "Negative licensing action" means a Final Agency Action resulting in the denial of an application, the imposition of fines, or the suspension~~,~~ or revocation of a license issued pursuant to the Child Care Licensing Act~~;~~ or the demotion of such a license to a probationary license.

TTT. "New employment verification" means verification of employment that has begun within the last sixty (60) days. It is verified by a county form, employer letter, or through collateral contact. Verification ~~which~~ includes a start date, hourly wage or gross salary amount, hours worked per week, pay frequency, work schedule (if nontraditional care hours are requested at application or re-determination), and verifiable employer contact information.

UUU. "Non-traditional care hours" means weekend, evening, or overnight care.

VVV. "Originating county" means the county where child care assistance eligibility was initiated in instances where a family receiving low-income child care moves from one county to another during their eligibility period.

WWW. "Overpayment" means child care assistance received by the adult caretaker(s) or teen parent(s), or monies paid to a child care provider, which they were not eligible to receive.

XXX. "Parent" means a biological, adoptive or stepparent of a child.

YYY. "Parent fee or co-payment" means the household's contribution to the total cost of child care paid directly to the child care provider(s) prior to any state/county child care funds being expended.

ZZZ. "Pay stubs" means a form or statement from the employer indicating the name of the employee, the gross amount of income, mandatory and voluntary deductions from pay (i.e. FICA, insurance, etc.), net pay and pay date, along with year-to-date gross income.

AAAA. "Physical custody" means that a child is living with, or in the legal custody of, the adult caretaker(s) or teen parent(s) on the days/nights they receive child care assistance.

BBBB. "Post eligibility stabilization period" means the time frame in which an adult caretaker or teen parent must complete their job search activity if, at Low-Income Child Care re-determination, they have not utilized their entire minimum thirteen (13) week time limited activity.

CCCC. "Preponderance of evidence" means credible evidence that a claim is more likely true than not.

DDDD. "Primary adult caretaker" means the person listed first on the application and who accepts primary responsibility for completing forms and providing required verification.

EEEE. "Protective Services Child Care" means a child care component within CCCAP for children that have been placed by the county in foster home care, kinship foster home care or non-certified kinship care; have an open child welfare case; and, the county has chosen to provide child care services utilizing the Child Care Development Fund (CCDF) rather than the Child Welfare Block Grant.

FFFF. "Prudent person principle (PPP)" means allowing the child care technician to act in a manner consistent with what a reasonable person of ordinary prudence would or would not do under the same or similar circumstances when executing their responsibilities to determine CCCAP eligibility, enter into a fiscal agreement, and reimburse child care providers for care that was not automatically processed through ~~chats~~CHATS.

GGGG. "Qualified exempt child care facilities" means a facility that is approved, certified, or licensed by any other department or agency, or federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility; and~~,~~ has been declared exempt from the child care licensing act as defined in Colorado Department of Human Services regulations at 12 CCR 2509-8, rule section 7.701.11 (June 1~~April 1~~, 2023). Herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us/ccr. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 720 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours, or at https://www.sos.state.co.us/ccr.

HHHH. "Qualified exempt child care provider" means a family child care home provider who is not licensed but provides care for a child(ren) from the same family; or an individual who is not licensed but provides care for a child(ren) who is related to the individual if the child's care is funded in whole or in part with money received on the child's behalf from the publicly funded CCCAP under Colorado Department of Human Services regulations at rule section 7.701.11, A, 1, b, incorporated by reference in subsection (GGGG), above.

IIII. "Rate notification" means a notification of provider reimbursement rates and applicable registration, activity, or transportation fees that reflect the child care provider's CCCAP reimbursement rate based on the comparison of the county's ceiling rates that are reflected in the current ~~F~~fiscal ~~A~~agreement and the provider's private pay rates, quality level or rate types.

JJJJ. "Receiving county" means the county where child care assistance eligibility is re-determined after a family receiving low-income child care moves from one county to another during their eligibility period.

KKKK. "Recipient" means the individual or family who is receiving or has received benefits from CCCAP pursuant to Part 1 of Article 4 of Title 26.5.

LLLL. "Recovery" means the act of collecting monies when an adult caretaker(s), teen parent(s) or child care provider has received childcare assistance benefits for which they were not eligible, commonly known as an "over payment".

MMMM. "Re-determination (redet) form" is a Department-prescribed form, which includes appeal rights, that is used to determine a household's continued eligibility for Low-Income Child Care at the end of their twelve (12) month minimum eligibility period.

NNNN. "Re-determination (Redet) process" is the process to update eligibility for Low-Income Child Care. This process is completed no earlier than every twelve (12) months and includes:

1~~A~~. The Department-prescribed re-determination form, which must be completed and signed by the adult caretaker or teen parent or their authorized representative; and~~,~~

2~~B~~. The required verification that supports the information declared on the re-determination form that is needed to determine continued eligibility.

OOOO. "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies: Middle States, Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

PPPP. "Relative" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, stepparent, stepbrother, stepsister, stepson, stepdaughter, uncle, aunt, niece, nephew, or cousin.

QQQQ. "Risk-based audit" means audit selection based on a combination of the likelihood of an event occurring and the impact of its consequences. This may include, but not be limited to, the number, dollar amounts and complexity of transactions; the adequacy of management oversight and monitoring; previous regulatory and audit results; review of the technician's accuracy; and/or reviews for separation of duty.

RRRR. "Self-employment" is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is responsible for all taxes and/or other required deductions from earned income.

SSSS. "Self-sufficiency standard" means the level of income adequate in each county for a given year to meet the cost of basic needs, exclusive of child care costs, based on a verifiable and statistically based third party source.

TTTT. "Slot contracts (county option)" means the purchasing of slots at a licensed child care provider for children enrolled in CCCAP in communities where quality care may not otherwise be available to county-identified target populations and areas or to incentivize or maintain quality. A slot contract is tied to a licensed child care provider and may be filled by any child who is eligible for and receiving CCCAP.

UUUU. "State established age bands" means the breakdown of child age ranges used when determining child care provider base reimbursement rates.

VVVV. "State or local public benefit" means any grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government, or by appropriated funds of a state or local government.

WWWW. "State Median Income" (SMI) refers to figures set by the Department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in rule section 3.11~~1~~05.1.(H).(2).

XXXX. "Substantiated" means that the investigating party has found a preponderance of evidence to support the complaint.

YYYY. "Target population" means a population whose eligibility is determined by criteria different than other child care populations, and has a priority to be served regardless of wait lists or freezes based upon appropriations. Current target populations include:

1~~A~~. Households whose income is at or below 130% of the current federal poverty guidelines;

2~~B~~. Teen parents;

3~~C~~. Children with additional care needs;

4~~D~~. Families experiencing homelessness; and~~,~~

5~~E~~. Segments of population defined by county, based on local needs.

ZZZZ. "Teen parent" means a parent under twenty-one (21) years of age who has physical custody of his/her child(ren) for the period that care is requested and is in an eligible activity such as attending junior high/middle school, high school, GED program, vocational/technical training activity, employment, self-employment, or job search.

AAAAA. "Temporary Absence or Temporary Break" means a period of time when an adult caretaker or teen parent is absent from their employment, self-employment, or education activity due to seasonal work, medical leave, maternity/paternity leave, and holidays or scheduled breaks but still remains employed, self-employed, or enrolled in training or education, while receiving Low-Income Child Care, and will return to the activity after the duration of their leave or break.

BBBBB. "Tiered reimbursement" means a pay structure that reflects increasing rates for high-quality early childhood programs that receive CCCAP reimbursement. These increases are made in addition to the base reimbursement rate.

CCCCC. "Timely written notice" means that any adverse action shall be preceded by a prior notice period of fifteen (15) calendar-days. "Timely" means that written notice is provided to the household and child care provider at least by the business day following the date the action was entered into the eligibility system. The fifteen (15) calendar-day prior notice period constitutes the period during which assistance is continued and no adverse action is to be taken during this time.

DDDDD. "Training and post-secondary education" is a Low-Income Child Care eligible activity where an adult caretaker or teen parent attends educational programs including regionally accredited post-secondary education for a Bachelor's degree or less or a workforce training program such as vocational, technical, or job skills training. Workforce training programs include educational activities after completing basic education.

EEEEE. "Transition families" means households ending their participation in the Colorado Works Program and who are eligible to transition to Low-Income Child Care Assistance.

FFFFF. "Units" or "unit of care" means the period of time authorized care is billed by a child care provider and paid for a household. (These units would be full-time, part-time, full-time/part-time, or full-time/full-time.)

GGGGG. "Up-to-date immunizations" means documentation of immunization status or exemption as required by the Colorado Department of Public Health and Environment (CDPHE). Immunizations required for school entry are set by the board of health and based on recommendations of the Advisory Committee on Immunization Practices (ACIP).

HHHHH. "Voluntarily out of the home" means circumstances where an adult caretaker or teen parent is out of the home due to his/her choice to include, but not be limited to, job search, employment, military service, vacations, and/or family emergencies.

IIIII. "Wait list" means a list maintained by a county that reflects individuals who have submitted a complete application for the CCCAP program for whom the county is not able to immediately enroll.

JJJJJ. "Willful misrepresentation/withholding of information" means an understatement, overstatement, or omission, whether oral or written, made by a household voluntarily or in response to oral or written questions from the Department, and/or a willful failure by a household to report changes in income, if the household's income exceeds eighty-five percent (85%) of the State median income within ten (10) days, or changes to the qualifying eligible activity within four weeks of the change.

3.10~~41~~ CCCAP ~~MISSION AND~~ APPROPRIATIONS

~~B. Appropriations~~

Nothing in these rules shall create a legal entitlement to child care assistance. Counties shall not be required to expend funds exceeding allocated state and federal dollars or exceeding any matching funds expended by the counties as a condition of drawing down federal and state funds.

When a county can demonstrate, through a written justification in its county CCCAP plan, that it has insufficient CCCAP allocations, a county is not required to implement a provision or provisions of rule(s) enacted under statutory provisions that are explicitly "subject to available appropriations." The county is not required to implement that or those rules or statutory provision(s) for which it has demonstrated through its annual CCCAP plan that it has insufficient CCCAP allocations to implement, except for the entry income eligibility floor referenced in rule section 3.111(H).

As part of its demonstration, the county shall include a list of priorities reflecting community circumstance in its county CCCAP plan that prioritizes the implementation of the rules and/or provisions of statute that are "subject to available appropriations."

If the Department determines the county CCCAP plan is not in compliance with these rules and/or provisions of statute, the Department will first work with the county to address the concerns. If a resolution cannot be agreed upon, the Department reserves the right to deny the county CCCAP plan. If the Department denies the county CCCAP plan, the county and the state shall work together to complete a final approved county CCCAP plan that is in compliance with these rules and statute. Approved county CCCAP plans can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families

3.10~~5~~2 PROGRAM FUNDING

A. ~~The Colorado Child Care Assistance Program~~ CCCAP will be funded through annual allocations made to the counties. ~~Nothing in these rules shall create a legal entitlement to child care assistance.~~ Counties may use annual allocation for child care services which includes direct services and administration.

B. Each county shall be required to meet a level of county spending for the Colorado Child Care Assistance Program that is equal to the county's proportionate share of the total county funds set forth in the annual general Appropriation Act for the ~~Colorado Child Care Assistance Program~~ CCCAP for that State fiscal year. The level of county spending shall be known as the county's maintenance of effort for the program for that State fiscal year.

C. The CCCAP allocation formula shall be applied uniformly across all counties and must be based on the relative cost of the program. The allocation formula must take into consideration:

1. The eligible population for each county using the federal poverty level (FPL) as outlined in rule section 3.1~~05.~~1.(H); and

2. Reimbursement rates set by the state as informed by the market rates study.

3. If not already taken into consideration in the initial allocation formula as stated in rule sections 3.10~~5~~2.(C).(1) and (2), the following factors must also be included:

   a. A measure of cost of living, which may include market rates; and~~,~~

   b. The cost of high quality child care programs.

4. If not already taken into consideration in the initial allocation formula, the formula may include the following factors:

   a. A statewide adjustment to the allocation formula for geographic differences within counties or regional differences among counties in order to improve access.

   b. A statewide adjustment to the allocation formula for drastic economic changes that may impact the ability of CCCAP to serve low-income families.

c. A statewide adjustment to mitigate significant decreases in county allocation amounts due to changes in the factors considered in the initial allocation formula.

~~3.104~~ APPLICANT RIGHTS

3.10~~64.1~~ ANTI-DISCRIMINATION

Child care programs shall be administered in compliance with Title VI of the Civil Rights Act of 1964 (42 USC 2000(d)) located at http://www.fhwa.dot.gov/environment/title_vi.htm; Title II of the Americans with Disabilities Act (42 USC 12132(b)).

A. Counties or their designee shall not deny a person aid, services, or other benefits or opportunity to participate therein, solely because of age, race, color, religion, gender, national origin, political beliefs, or persons with a physical or mental disability.

B. No otherwise qualified individual with a physical or mental disability shall solely, by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity provided by the counties or their designee(s).

C. The county shall make services available to all eligible adult caretaker(s) and teen parents, subject to appropriations, including those with mental and physical disabilities and non-English speaking individuals, through hiring qualified staff or through purchase of necessary services.

3.10~~74.2~~ CONFIDENTIALITY

The use or disclosure of information by the counties or their designee(s) concerning current or prior applicants and recipients shall be prohibited except for purposes directly connected with the activities listed below:

A. The administration of public assistance programs, Child Welfare, Head Start and Early Head Start programs, and related ~~Department~~ activities.

B. Any investigation, recovery, prosecution, or criminal or civil proceeding in connection with the administration of the program.

C. The adult caretaker(s) or teen parent(s) applying for CCCAP may authorize a licensed child care provider or Head Start provider to assist them with the completion of a Low-Income Child Care application, including collection and organization of supporting documentation and submission of the application and supporting documents to a county. Authorization for application assistance and release of information shall be obtained on a D~~d~~epartment-approved form and included with the Low-Income Child Care application.

3.10~~84.3~~ TIMELY WRITTEN NOTICE OF ADVERSE ACTION

A decision to take adverse action concerning an applicant or a child care provider for assistance payments will result in a written notice mailed to the applicant or child care provider within one (1) business day of the decision. The written notice is considered mailed when it is faxed, emailed, sent via other electronic systems, hand-delivered, or deposited with the postal service. Fifteen (15) calendar ~~-~~days will follow the date of mailing the notice before adverse action is taken with the following exceptions ~~,~~ ~~which~~that require no prior notice:

A. Facts indicate an overpayment because of probable fraudulent behavior or an intentional program violation and such facts have been verified to the extent possible.

B. The proposed adverse action is based on a written or verbal statement from the adult caretaker(s) or teen parent(s) who state(s) that he/she no longer wishes to receive assistance or services.

C. The proposed adverse action is requested by another county or ~~state~~ the ~~d~~Department.

D. The counties or their designee(s) have confirmed the death of a recipient or of a~~A~~dult c~~C~~are ~~T~~taker or ~~T~~teen parent.

E. The county has exercised its right to terminate a fiscal agreement with any child care provider because a child's health or safety is endangered, or the child care provider is under a negative licensing action.

3.10~~94.4~~ ADULT CARETAKER OR TEEN PARENT AND CHILD CARE PROVIDER APPEAL RIGHTS

Counties' or designee(s)' staff shall advise adult caretakers or teen parents in writing of their right to a county dispute resolution conference or state level fair hearing pursuant to Colorado Department of Human Services rule sections 3.840 and 3.850 of Income Maintenance Volume 3 (9 CCR 2503-~~18~~) (July 1, 2020), herein incorporated by reference. No later editions or amendments are incorporated. A copy of these rules are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, CO 80203 or at https://www.sos.state.co.us/CCR. These rules are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 Ash St., Denver, CO 80246, during regular business hours.

Child care providers shall be given written notice of their right to an informal county conference when they are given their copy of the fiscal agreement.

3.11~~005~~ LOW-INCOME CHILD CARE

Eligible ~~Colorado Child Care Assistance Program~~CCCAP participants ~~shall~~ must: be an adult caretaker(s) or teen parent(s) of a child;~~,~~ meet program guidelines~~,~~; ~~and are~~ be low-income adult caretakers or teen parents ~~who are~~participating in a low-income eligible activity~~,~~; and need child care assistance.

3.11~~05.~~1 LOW-INCOME CHILD CARE ELIGIBILITY

To be eligible for Low-Income Child Care assistance the following criteria shall be met:

A. All adult caretakers and teen parents shall be verified residents of the county from which assistance is sought and received at the time of application and re-determination. Adult caretaker(s) or teen parent(s) shall remain eligible for the duration of the eligibility period if they report that they are no longer residents of the county in which they are actively receiving assistance per rule section 3.12~~512~~ (BB).

B. The adult caretaker(s) or teen parent(s) shall ~~meet the following criteria~~:

1. ~~Is~~ Be actively participating in an eligible activity;

2. Meet~~s~~ the income eligibility guidelines set by the Department; and

3. ~~Shall h~~Have physical custody of the child for the period they are requesting care.

C. The applicant must complete ~~T~~the CCCAP application process ~~shall be completed~~ and the primary adult caretaker or teen parent ~~shall~~ must sign the required application forms. This includes:

1. The State Low-Income Child Care Assistance Program application, which includes appeal rights, signed and completed by the applicant ~~or their authorized representative, which includes appeal rights~~.

    a. Counties may accept applications from another public assistance program in lieu of the Low-Income Child Care application.

    b. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the head start program ~~counties~~ and counties are encouraged to work with local Head Start programs to coordinate this effort.

    c. Families enrolled in a Head Start or Early Head Start program at the time they apply for CCCAP~~,~~ shall have a re-determination date that aligns with the Head Start or Early Head Start program year.

2. The required verification supporting the information declared on the application form~~:~~, including:

    a. Proof of current residence;

    b. Citizenship, age, and identity of the child(ren) for whom care is requested;

        1) A child's citizenship status, age, and identity are considered to be verified if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

        2) The county must request additional verification if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

            a) If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, ~~or~~ with other information on the application, or on previous applications;

            b) If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or

            c) If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

    c. Up-to-date immunizations, if applicable;

    d. Statement of ~~L~~low-~~Income~~ income eligible activity;

    e. Work or low-income activity Schedule (if non-traditional care hours are requested at application or redetermination);

f. Income;

g. Incapacitation, if applicable;

h. Custody arrangement and/or parenting schedule, if applicable;

i. Child care provider if one has been chosen at the time of application; and;

j. Other verifications as determined by the Department-approved county plan which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families.

3. An orientation or interview for new applicants as a county option. Counties shall ensure that the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

D. Eligible Households

1. The following household compositions qualify as eligible households:

a. Households with one adult caretaker or teen parent, where the adult caretaker or teen parent is engaged in a low-income eligible activity, meets low-income eligibility guidelines, has physical custody of the child, and needs child care assistance.

b. Households with two adult caretakers or teen parents, when one adult caretaker or teen parent is involuntarily out of the home. Such a household shall be considered a household with one adult caretaker or teen parent.

c. Households with two (2) adult caretakers or teen parents that need child care, where:

1) Both adult caretakers or teen parents are engaged in a low-income eligible activity; ~~or;~~

2) One adult caretaker or teen parent is voluntarily absent from the home, but both adult caretakers or teen parents are in a low-income eligible activity; or;

3) One adult caretaker or teen parent is engaged in a low-income eligible activity and the other adult caretaker or teen parent is incapacitated such that, according to a physician's statement or ~~licensed psychologist~~other medical verification, they are unable to care for the child(ren).

2. Households are considered households with two adult caretakers or teen parents when two adults or teen parents contribute financially to the welfare of the child and/or assume parent rights, duties, and obligations similar to those of a biological parent, even without legal adoption.

3. Two separate adult caretakers or teen parents who share custody but live in separate households may apply for the same child through separate applications, during periods that they have physical custody.

4. All adult caretakers or teen parents~~,~~ who are engaged in a low-income eligible activity~~,~~ must have physical custody of the child and meet low-income eligibility guidelines.

5. Any unrelated individual~~,~~ who is acting as a primary adult caretaker for an eligible child~~,~~ is required to obtain verification from the child's biological or adoptive parent, legal guardian, or a court order which identifies the unrelated individual as the child's adult caretaker.

6. Adult caretakers or teen parents that are not determined work eligible per Colorado Works Program rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB) above, who are caring for children receiving Basic Cash Assistance through the Colorado Works Program are not eligible for Colorado Works Child Care but may be eligible for Low-Income Child Care if the adult caretaker or teen parent meets all other Low-Income program criteria.

7. Adoptive parents (including those receiving adoption assistance) are eligible if they meet the Low-Income program requirements.

8. Adult caretaker(s) or teen parent(s) who are participating in a low-income eligible activity and go on temporary verified maternity/paternity leave.

9. Adult caretaker(s) or teen parent(s) with an open and active Low-Income Child Care case who are participating in a low-income eligible activity and go on temporary verified medical leave and are unable to care for their children.

10. A separated primary adult caretaker or teen parent with a validly issued temporary order for parental responsibilities or child custody shall not be determined ineligible based on the other spouse's or parent's financial resources.

E. Ineligible Household Compositions

Incapacitated single adult caretakers or teen parents who are not in a low-income eligible activity are not eligible for the low-income program.

F. Eligible Child

An "eligible child" is a child from birth to the age thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with verified additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for themselves or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s).

1. All children who have had an application made on their behalf or are receiving child care assistance shall verify that they are a citizen/legal resident and provide proof of identity if inconsistent, in accordance with rule section 3.1105.1(C)©(2)(b).

2. Children who are not attending school as defined by the Colorado Department of Education and who are receiving child care outside of the child's home from a qualified exempt child care provider who is unrelated to the child and care is provided outside of the child's home and who are not attending school as defined by the Colorado Department of Education shall must provide a copy of their immunization record to the county, indicating that the children are age-appropriately immunized or have a, unless exempt due to religious or medical reasons exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements).

G. Low-Income Eligible Activities

Adult caretakers or teen parents shall meet the criteria of at least one of the following low-income eligible activities:

1. Employment Criteria

   a. Adult caretakers or teen parents may be employed full or part time.

   b. Adult caretaker(s) or teen parent(s) ~~shall~~ must verify that his/her gross income divided by the number of hours worked equals at least the current federal minimum wage.

   c. Owners of Limited Liability Corporation's (LLC)~~'s~~ and S-Corporations are considered employees of the corporation.

2. Self-Employed Criteria

   a. The adult caretaker(s) or teen parent(s) shall submit documentation listing their income and work-related expenses. The county shall obtain verification of all expenses from the adult caretaker(s) or teen parent(s) or they will not be ~~allowed~~considered.

   b. The adult caretaker(s) or teen parent(s) shall submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at redetermination.

   c. The adult caretaker(s) or teen parent(s) shall show that they have maintained an average income that exceeds their business expenses from self-employment.

   d. The adult caretaker(s) or teen parent(s) shall show that their taxable gross income divided by the number of hours worked equals at least the current federal minimum wage.

   e. Adult caretakers or teen parent(s) whose self-employment endeavor is less than twelve (12) months old, may be granted child care for six (6) months or until their next re-determination, whichever is longer, to establish their business. At the end of the launch period, adult caretakers shall provide documentation of income, verification of expenses, and proof that they are making at least federal minimum wage for the number of hours worked. Projected income for the launch period shall be determined based upon the federal minimum wage times the number of declared hours worked.

3. Job Search Criteria

   a. Job search child care is available to eligible adult caretakers or teen parents that met the eligibility criteria on the most recent eligibility determination for no fewer than thirteen (13) weeks of child care for each instance of non-temporary cessation of activity (per rule section 3.11~~05.2~~(C).

   b. If the job search activity is reported within the four (4) week reporting period, the activity shall begin the day that the change in activity was reported. If the job search activity is reported outside of the four (4) week reporting period, the activity shall begin the date that activity cessation occurred.

c. Job search shall continue until the adult caretaker or teen parent gains employment, enters into another low-income eligible activity, or when all of the allotted job search time has been utilized. Any day utilized in a week is considered one (1) week used toward the time limited activity.

d. Regular consistent child care must be provided during the job search period.

e. The amount of care authorized each day shall, at a minimum, be commensurate with the amount needed to complete the job search tasks.

f. Job search child care shall be approved in each instance of non-temporary job loss or when adult caretakers or teen parents end their low-income eligible activity while enrolled in the Low-Income program.

g. An adult caretaker or teen parent shall be determined ineligible once they have utilized their allotted job search time and have not reentered into a low-income eligible activity.

h. If at the time of re-determination, the adult caretaker or teen parent remains in a job search activity, has not utilized the remainder of their allotted job search time, and has provided the required re-determination documentation, the county shall place the case into a post-eligibility stabilization period for the duration of the remaining job search time.

1) If during the post-eligibility stabilization period the adult caretaker or teen parent reports that they have gained employment or reentered into another low-income eligible activity, the county shall process this change, continue care, and assess a parent fee.

2) The adult caretaker or teen parent shall be determined ineligible if they have not reentered into a low-income eligible activity and the post eligibility stabilization period has expired.

4. Training Criteria and Post-Secondary Education

Subject to available appropriations, an adult caretaker(s) who is enrolled in a training or post-secondary education program is eligible for CCCAP for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime, provided all other eligibility requirements are met during the adult caretaker's enrollment. These weeks do not have to be used consecutively. A county may give priority for services to a working adult caretaker(s) over an adult caretaker(s) enrolled in post-secondary education or workforce training. When a teen parent becomes enrolled in post-secondary education, they are considered an adult caretaker and the time limited activity timelines apply.

~~Counties'~~ County child care staff may refer adult caretakers and teen parents to community employment and training resources for assistance in making a training and postsecondary education decision.

a. Adult caretaker educational programs include post-secondary education for a first bachelor's degree or less, or workforce/vocational/technical job skills training when offered as secondary education, which result in a diploma or certificate, for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime. This is limited to coursework for the degree or certificate.

b. In addition to the weeks of assistance available for post-secondary and vocational or technical training, up to fifty-two (52) weeks of assistance is allowable for basic education.

c. Any week in which at least one (1) day is utilized for child care is considered one (1) week used toward the time limit.

H. Low-Income Eligibility Guidelines

1. Adult caretaker(s) or teen parent(s) gross income must not exceed eighty-five percent (85%) of the state median income.

a. Entry eligibility shall be set by the Department at a level based on the ~~self-sufficiency~~self-sufficiency standard, not to be set below one hundred eighty-five percent (185%) of the federal poverty level.

b. Exit income eligibility must be eighty-five percent (85%) of the state median income.

2. Effective October 1, ~~2022~~2023, monthly gross income levels, for one-hundred percent (100%) of the Federal Poverty Guideline (FPG), as well as eighty-five percent (85%) of State Median Income (SMI) for the corresponding household size are as follows:

Family Size	100% Federal Poverty Guideline (FPG)	85% State Median Income (SMI) (State and Federal Maximum Income Limit)
1	$~~1,132.50~~1,215.00	$~~4,080.62~~4,366.15
2	$~~1,525.83~~1,643.33	$~~5,336.19~~5,709.58
3	$~~1,919.17~~2,071.67	$~~6,591.77~~7,053.01
4	$~~2,312.50~~2,500.00	$~~7,847.34~~8,396.44
5	$~~2,705.83~~2,928.33	$~~9,102.92~~9,739.87
6	$~~3,099.17~~3,356.67	$~~10,358.49~~11,083.30
7	$~~3,492.50~~3,785.00	$~~10,593.91~~11,335.20
8	$~~3,885.83~~4,213.33	$~~10,829.33~~11,587.09
Each Additional person	$~~393.33~~428.33	$~~235.42~~251.89

3. Generally, the expected monthly income amount is based on the income received in the prior thirty (30) day period; except that, when the prior thirty (30) day period does not provide an accurate indication of anticipated income as referenced in the definition of "Income Eligibility" in rule section 3.103(JJJ) or under circumstances as specified below, a different period of time may be applicable:

a. For new or changed income, a period shorter than a month may be used to arrive at a projected monthly amount.

b. For contract employment in cases, such as in some school systems, where the employees derive their annual income in a period shorter than a year, the income shall be prorated over the term of the contract, provided that the income from the contract is not earned on an hourly or piecework basis.

c. For regularly received self-employment income, net earnings will usually be prorated and counted as received in a prior thirty (30) day period, except for farm income. For further information, see rule section 3.1105.1 (I)(3) on self-employment under countable earned income.

d. For all other cases where receipt of income is reasonably certain, but the monthly amount is expected to fluctuate, a period of up to twelve (12) months may be used to arrive at an average monthly amount.

e. For income from rental property to be considered as self-employment income, the adult caretaker(s) or teen parent(s) shall actively manage the property at least an average of twenty (20) hours per week. Income from rental property will be considered as unearned income if the adult caretaker(s) or teen parent(s) are not actively managing the property an average of at least twenty (20) hours per week. Rental income, as self-employment or as unearned income, may be averaged over a twelve (12) month period to determine monthly income. Income from jointly owned property shall be considered as a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.

f. For cases where a change in the monthly income amount can be anticipated with reasonable certainty, such as with Social Security cost-of-living increases or other similar benefit increases, the expected amount shall be considered in arriving at countable monthly income for the month received.

g. Income inclusions and exclusions (rule sections 3.1105.1, (I) and& (J)) shall be used in income calculations.

h. Irregular child support income, not including lump sum payments, may be averaged over a period of time up to twelve (12) months in order to calculate household income.

i. Non-recurring lump sum payments, including lump sum child support payments, may be included as income in the month received or averaged over a twelve (12) month period, whichever is most beneficial for the clientrecipient.

4. Income Verification at Application and Re-determination

a. Earned Income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if they choose to do so if such verification more accurately reflects a household's current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the adult caretaker or teen parent shall submit documentation listing his/her income and work-related expenses

for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income and expenses if they choose to do so if such verification more accurately reflects a household's current income level. The county shall obtain verification of all expenses from the adult caretaker(s) or teen parent(s) or they will not be ~~allowed~~considered. The adult caretaker(s) or teen parent(s) shall submit documentation listing his/her income and work-related expenses to the county.

b. Unearned Income

Unearned income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may choose to also provide verification of up to twelve (12) of the most recent months of income if such verification more accurately reflects a household's current income level.

c. 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.

d. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. Counties shall document the verbal verification in the case file to include the date that the information was received, who provided the information, and a contact phone number.

e. If income is not verified

1) At application

a) If verifications are not returned within the fifteen (15) day noticing period the application will be denied.

b) If all verification has not been submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

2) At re-determination, if all verifications are not received within the fifteen (15) day noticing period, the CCCAP case will be closed.

I. Income Inclusions

Each of ~~T~~the following are considered countable income and are taken into consideration for eligibility for child care.

1. Gross earnings, salary, armed forces pay (including but not limited to basic pay, basic assistance for housing (BAH) and basic assistance for subsistence (BAS), hazard duty

pay, and separation pay), commissions, tips, and cash bonuses are counted before deductions are made for taxes, bonds, pensions, union dues and similar deductions. If child care is provided for an employment activity, then gross wages divided by the number of hours worked shall equal at least the current federal minimum wage.

2. Taxable gross income (declared gross income minus verified business expenses from one's own business, professional enterprise, or partnership) from non-farm self-employment.

   a. These verified business expenses include, but are not limited to:

      1) The rent of business premises;

      2) Wholesale cost of merchandise;

      3) Utilities;

      4) Taxes;

      5) Mileage expense for business purposes only;

      6) Labor; and

      7) Upkeep of necessary equipment.

   b. The following are not allowed as business expenses from self-employment:

      1) Depreciation of equipment;

      2) The cost of and payment on the principal of loans for capital asset or durable goods; and

      3) Personal expenses such as personal income tax payments, lunches, and transportation to and from work.

   c. If child care is provided for a self-employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income taxable gross income may be averaged for a period of up to twelve (12) months.

3. Taxable gross income (gross receipts minus operating expenses from the operation of a farm by a person on ~~his~~ their own account, as an owner, renter, or tenant farming) from farm self-employment.

   a. Gross receipts include, but are not limited to:

      1) The value of all products sold;

      2) Government crop loans;

      3) Money received from the rental of farm equipment and/or farm land to others; and

      4) Incidental receipts from the sale of wood, sand, gravel, and similar items.

b. Operating expenses include, but are not limited to:

1) Cost of feed, fertilizer, seed, and other farming supplies;

2) Cash wages paid to farmhands;

3) Cash rent;

4) Interest on farm mortgages;

5) Farm building repairs; and

6) Farm taxes (not state and federal income taxes).; and

~~7) Similar expenses.~~

c. The value of fuel, food, or other farm products used for family living is not included as part of net income. If child care is provided for an employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income, taxable gross income may be averaged for a period of up to twelve (12) months. For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of up to twelve (12) months shall be used to arrive at an average monthly amount.

4. An in-kind benefit is any gain or benefit received by the adult caretaker(s) or teen parent(s) as compensation for employment, which is not in the form of money such as meals, clothing, public housing, or produce from a garden. A dollar amount must be established for this benefit, and it must be counted as other income. The dollar amount is based on the cost or fair market value.

5. Vendor payments are money payments that are not payable directly to an adult caretaker or teen parent but are paid to a third party for a household expense and are countable when the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the adult caretaker(s) or teen parent(s) and are part of the compensation for employment.

6. Railroad retirement insurance

7. Veterans Payments

a. Retirement or pension payments paid by defense finance and accounting services (DFAS) to retired members of the Armed Forces;

b. Pension payments paid by the Veteran's Administration to disabled members of the Armed Forces or to survivors of deceased veterans;

c. Subsistence allowances paid to veterans through the GI bill. ~~F~~for education and on-the-job training; and

d. "Refunds" paid to veterans as GI insurance premiums.

8. Pensions and annuities (minus the amount deducted for penalties, if early payouts are received from these accounts)

a. Retirement benefit payments;

b. 401(k) payments;

c. IRA payments;

d. Pension payments; or

e. Any other payment from an account meant to provide for a retired person or their survivors.

9. Dividends

10. Interest on savings or bonds

11. Income from estates or trusts

12. Net rental income

13. Royalties

14. Dividends from stockholders

15. Memberships in association

16. Periodic receipts from estates or trust funds

17. Net income from rental of a house, store, or other property to others

18. Receipts from boarders or lodgers

19. Net royalties

20. Inheritance, gifts, and prizes

21. Proceeds of a life insurance policy, minus the amount expended by the beneficiary for the purpose of the insured individual's last illness and burial, which are not covered by other benefits

22. Proceeds of a health insurance policy or personal injury lawsuit to the extent that they exceed the amount to be expended or shall be expended for medical care

23. Strike benefits

24. Lease bonuses and royalties (e.g., oil and mineral)

25. Social Security pensions, survivor's benefits and permanent disability insurance payments made prior to deductions for medical insurance

26. Unemployment insurance benefits

27. Worker's compensation received for injuries incurred at work

28. Maintenance payments made by an ex-spouse as a result of dissolution of a marriage

29. Child support payments

30. Military allotments

31. Workforce innovation opportunity act (WIOA) wages earned in work experience or on the-job training

32. Earned AmeriCorps income includes government payments from agricultural stabilization and conservation service and wages of AmeriCorps volunteers in service to America (vista) workers. Vista payments are excluded if the client was receiving CCCAP when they joined vista. If the client was not receiving CCCAP when they joined vista, the vista payments shall count as earned income.

33. CARES payments – refugee payments from Refugee Services

J. Income Exclusions

Each of ~~T~~the following are not considered countable income and are not taken into consideration for eligibility for child care.

1. Earnings of a child in the household when not a teen parent

2. Supplemental Security Income (SSI) under Title XVI

3. Any payment made from the Agent Orange Settlement Fund, pursuant to P.L. No. 101201

4. Nutrition related public assistance

   a. The value of Food Assistance benefits (SNAP)

   b. Benefits received under title VII, Nutrition Program for the Elderly, of The Older Americans Act (42 U.S.C. 3030A)

   c. The value of supplemental food assistance received under the Special Food Services Program for Children provided for in the National School Lunch Act and under the Child Nutrition Act

   d. Benefits received from the Special Supplemental Food Program for Women, Infants and Children (WIC)

5. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act

7. Payments made from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita

8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA)

9. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

10. Payments received from the county or state for providing foster care, kinship care, or for an adoption subsidy

11. Payments to volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers are serving is not equivalent to or greater than the minimum wage, and Title II and III of the Domestic Volunteer Services Act

12. Low-Income Energy Assistance Program (LEAP) benefits

13. Social security benefit payments and the accrued amount thereof to a recipient when an individual plan for self-care and/or self-support has been developed

14. Earned Income Tax Credit (EIC) payments

15. Monies received pursuant to the "Civil Liberties Act of 1988," P.L. No. 100-383 (by eligible persons of Japanese ancestry or certain specified survivors, and certain eligible Aleuts)

16. Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education (Basic Educational Opportunity Grants, Supplementary Educational Opportunity Grants, National Direct Student Loans, and Guaranteed Student Loans); Pell Grant Program, the PLUS Program, the Byrd Honor Scholarship programs, and the College Work Study Program

17. Training allowances granted by Workforce Investment Act (WIA) to enable any individual, whether dependent child or caretaker relative, to participate in a training program are exempt

18. Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under the Youth Employment and Demonstration Project Act

19. Any portion of educational loans, scholarships, and grants obtained and used under conditions that preclude their use for current living costs and that are earmarked for education

20. Financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act that is made available for attendance costs. Attendance costs include: tuition, fees, rental or purchase of equipment, materials, supplies, transportation, dependent care and miscellaneous personal expenses

21. Any money received from the Radiation Exposure Compensation Trust Fund, pursuant to Public Law No. 101-426 as amended by Public Law No. 101-510

22. Resettlement and Placement (R & P) vendor payments for refugees

23. Supportive service payments under the Colorado Works Program

24. Home Care Allowance under adult categories of assistance

25. Loans from private individuals as well as commercial institutions

26. Public cash assistance grants including Old Age Pension (OAP), Aid to the Needy Disabled (AND), and Temporary Assistance to Needy Families (TANF)/Colorado Works

27. Reimbursements for expenses paid related to a settlement or lawsuit

28. Irregular income in the certification period that totals less than ninety dollars ($90) in any calendar quarter, such as slight fluctuations in regular monthly income and/or that which is received too infrequently or irregularly to be reasonably anticipated

29. Income received for participation in grant funded research studies on early childhood development

K. Income Adjustments

1. Verified court-ordered child support payments for children not living in the household shall be deducted prior to applying the monthly gross income to the maximum gross monthly income guidelines and when calculating parent fees. To qualify for the adjustment, the child support shall be:

   a. Court ordered and paid; and

   b. For a current monthly support order (not including arrears).

2. In order to be considered verified:

   a. There shall be verification that payments are court ordered and actually paid;

   b. Court ordered payments deducted shall be for current child support payments; and

   c. Such verification shall be made at the time of initial approval of eligibility for services and at the time of each re-determination of eligibility.

3.1105.2 ADULT CARETAKER OR TEEN PARENT RESPONSIBILITIES

A. Primary adult caretaker(s) or teen parent(s) ~~shall~~ must sign the application/re-determination form along with providing verification of income to determine eligibility.

B. Adult caretaker(s) or teen parent(s) agree~~s~~ to pay the parent fee listed on the child care authorization notice and understand~~s~~ that it is due to the child care provider in the month that care is received.

C. Adult caretaker(s) or teen parent(s) ~~have the responsibility to~~must report and verify changes to income in writing within ten (10) calendar days of the change, only if the household's income exceeds eighty-five percent (85%) of the State median income. Also, if the adult caretaker(s) or teen parent(s) ~~is~~ are no longer in their qualifying low-income eligible activity, this is considered to be a temporary cessation of activity and must be reported in writing within four (4) calendar weeks. This does not include a temporary break in low-income eligible activity such as a temporary job loss from the qualifying eligible activity or temporary change in participation in a training or education activity where the individual remains employed, self-employed, or enrolled in training or education. A temporary break includes but is not limited to:

1. Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

2. Any temporary absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to extended verified medical leave;

3. Any temporary absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to verified maternity/paternity leave; or

4. Any temporary absence from an education or training activity due to holidays or scheduled breaks.

D. Adult caretaker(s) or teen parent(s) ~~shall~~ must provide the county department ~~with shall provide the county department with~~ a copy of their child's immunization record ~~to the county,~~ indicating that the child~~ren are~~ is age-appropriately immunized or have a religious or medical exemption~~,~~ for all children who receive child care from qualified exempt child care providers not related to the children, where care is provided outside of the child's home, and the children are not school age.~~; unless exempt due to religious or medical reasons~~ (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements~~). If there child receives child care from a qualified exempt child care provider not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age.~~

E. Adult caretaker(s) or teen parent(s) ~~shall~~ must report changes in child care providers prior to the change.

F. All adult caretaker(s) or teen parent(s) ~~shall~~ must provide verification of their schedule related to their low-income eligible activity only at application and/or re-determination when non-traditional care hours are requested.

G. The primary adult caretaker(s) or teen parent(s) must verify citizenship status, age, and identity of the child(ren) for whom care is requested, in accordance with rule section 3.11~~05.1(C)~~(2)(b). If the county determines that the adult caretaker or teen parent's declaration on the application or redetermination form is inconsistent, the adult caretaker or teen parent will be required to provide verification of what has been determined to be inconsistent.

H. When a child care case has closed and not more than thirty (30) days have passed from date of closure; the adult caretaker(s) or teen parent(s) may provide the verification needed to correct the reason for closure. If the household is determined to be eligible, services may resume as of the date the verification was received by the county, despite a gap in services. The adult caretaker(s) or teen parent(s) would be responsible for payment during the gap in service.

I. Adult caretaker(s) or teen parent(s) shall not share their individual attendance credentials with the child care provider at any time or they may be subject to disqualification per rule section 3.133~~15.4~~ (B).

J. Adult caretaker(s) or teen parent(s) ~~are required to~~must use the Attendance Tracking System (ATS) to check children in and out for the days of care authorized and attended unless the child care provider has been granted an exemption by the Department. Non-cooperation with the use of the ATS may result in case closure and/or non-payment of the child care ~~subsidy~~ benefits as defined by county policy.

3.11~~05.~~3 LOW-INCOME CHILD CARE RE-DETERMINATION

A. The re-determination process shall be conducted no earlier than every twelve (12) months. The ~~State~~Department-prescribed re-determination form ~~shall~~ must 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~~ must 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 may not be eligible for child care ~~subsidies~~benefits.

1. Employed and self-employed adult caretaker(s) or teen parent(s) shall submit documentation of the following:

a. Earned income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the adult caretaker or teen parent ~~shall~~ must submit documentation listing his/her income and verification of work-related expenses for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. An adult caretaker or teen parent may also provide verification of up to twelve (12) of the most recent months of income and expenses if he/she chooses to do so if such verification more accurately reflects a household's current income level. All expenses shall be verified or they will not be allowed.

b. Unearned income received during the prior thirty (30) day period ~~shall~~ must be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

c. All adult caretaker(s) or teen parent(s) ~~shall~~ must provide verification of their schedule related to their low-income eligible activity only at application and/or redetermination and only when non-traditional care hours are requested.

d. At application and re-determination, adult caretakers or teen parents ~~shall~~ must 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.

2. Adult caretaker(s) or teen parent(s) in training ~~shall~~ must submit documentation from the training institution which verifies school schedule (only if reported at application or redetermination and non-traditional care hours are requested), and verifies current student status.

3. Adult caretaker(s) or teen parent(s) ~~shall~~ must provide the county department with up-to-date immunization records indicating age-appropriate immunizations or a religious or medical exemption age (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements) for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school ~~age., unless exempt due to religious or medical reasons pursuant to sections 25-4-902 and 25-4-908, C.R.S.~~

4. If written documentation is not available at time of eligibility determination, verbal verification from collateral contacts such as the employer or other person issuing the payment may be obtained. Counties shall document the collateral contact verification in the case file to include the date that the information was received, who provided the information, and a contact phone number. Acceptable collateral contacts include but are not limited to:

   a. Employers;

   b. Landlords;

   c. Social/migrant service agencies; and~~,~~

   d. Medical providers who can be expected to provide accurate third party verification.

B. Parent fees shall be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker or teen parent's current income level. The fee change shall be effective the first full calendar month after the change is reported and verified, and timely written notice is provided.

C. For adult caretaker(s) or teen parent(s) whose children are enrolled in Head Start or Early Head Start, counties ~~shall~~ must extend re-determination of eligibility to annually coincide with the Head Start or Early Head Start program schedule. These households are still responsible for notifying the county of any changes that may impact eligibility.

3.1~~05.~~4 TERMINATION OF LOW-INCOME CHILD CARE SERVICES

A. County departments must terminate ~~C~~child care authorizations and cases ~~shall be terminated~~ during the eligibility period for any of the following eligibility ~~-~~related reasons:

1. Household income exceeds eighty-five percent (85%) of state median income as outlined in rule section 3.1~~05.~~1~~.~~(H)~~.~~(2) during eligibility period;

2. Adult caretaker(s) or teen parent(s) is no longer a resident of the state;

3. Adult caretaker(s) or teen parent(s) is not involved in a low-income eligible activity and their job search period has expired;

4. Adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined in rule section 3.1105.1.(G) are not considered to be in a low-income eligible activity;

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care; or

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation.

B. Child care authorizations and/or cases must be terminated for the following eligibility--related reasons at re-determination only:

1. Eligible child exceeds age limits;

2. Adult caretaker(s) or teen parent(s) did not pay parent fees, an acceptable payment schedule has not been worked out between the child care provider(s) and adult caretaker(s) or teen parent(s), or the adult caretaker(s) or teen parent(s) has/have not followed through with the payment schedule;

3. Adult caretaker(s) or teen parent(s) exceeds time limited low-income eligible activity time limits;

4. Adult caretaker(s) or teen parent(s) fails to comply with re-determination requirements;

5. Adult caretaker(s) or teen parent(s) is not participating in a low-income eligible activity;

6. Adult caretaker(s) or teen parent(s) has become a participant in Colorado Works;

7. Adult caretaker(s) or teen parent(s) did not submit required immunization records;

8. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the county or state;

9. Adult caretaker(s) or teen parent(s) do not meet federal minimum wage requirement for employment or self-employment and are not considered to be in a low-income eligible activity;

10. Household income exceeds eighty-five percent (85%) of State median income as outlined in rule section 3.1105.1.(H).(1); or

11. If the child has had twenty-two (22) or more unexplained absences from authorized care within thirty (30) days of the re-determination date and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

C. Reason for termination must be documented on the ~~state~~ Department-prescribed closure form. A copy of the form must be ~~and~~ mailed via postal service;~~,~~ emailed or delivered by other electronic delivery systems; ~~or,~~ faxed; or hand-delivered to the primary adult caretaker or teen parent and to the child care provider.

D. Upon termination from the child care program, the adult caretaker(s) or teen parent(s) will have thirty (30) days from the effective date of closure to correct or provide the information without having to reapply for benefits. Upon correcting or providing the information, eligibility will continue as of the date the missing information was provided to the county. Parent fees will be based on the previous amount specified until prior notice is provided of changes to future parent fees.

E. Nothing in this rule section shall preclude an adult caretaker(s) or teen parent(s) from voluntarily withdrawing from the Low-Income program.

3.1150~~6~~ COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents who are approved for Colorado Works and are determined work eligible per Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB) are eligible to receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent has been determined eligible for transition to Low-Income Child Care prior to the end of the twelve (12) month period.

B. The ~~state~~Department-prescribed Colorado Works Child Care Referral Form shall be completed by the county Colorado Works worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file as follows:

1. When a household is determined eligible for Colorado Works Child Care;

2. When there are changes in household composition;

3. To continue care beyond the end of each twelve (12) month period;

4. When a household is no longer eligible for Colorado Works, at which time the household shall be transitioned to Low-Income Child Care per rule section 3.1170~~6.2~~; and/or~~,~~

5. When a household's Colorado Works case is transitioned to another county.

C. Adult caretakers or teen parents that are not determined work eligible per Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), who are caring for children who are receiving basic cash assistance through the Colorado Works Program may be eligible for Low-Income Child Care if the adult caretaker or teen parent is not a part of the Colorado Works assistance unit~~;~~ and~~,~~ theyshe/~~he~~ meets all other low-income program criteria.

3.1160~~6.1~~ ELIGIBILITY FOR COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents that have been determined eligible for Colorado Works, have entered into a current individualized plan, are participating in allowable work activities as defined in Colorado Works rules (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), and have been referred for child care by the county Colorado Works worker ~~shall~~ will be considered to be participating in an eligible activity and ~~shall~~ must receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent transitions to Low-Income Child Care prior to the end of the twelve (12) month period.

B. Colorado Works Child Care cases must be authorized for a minimum of twelve (12) months based on the child's need for care.

C. Upon receipt of a referral at the following times, ~~O~~only earned income that is reported and verified by the county Colorado Works worker will be considered countable income for Colorado Works Child Care cases ~~upon receipt of a referral at the following times~~:

1. When a household is initially determined eligible for Colorado Works Child Care; and/or~~,~~

2. When care is continued beyond the end of each twelve (12) month period.

D. The ~~C~~child care schedule shall be determined and shared by the county Colorado Works worker on the ~~state~~Department-prescribed Colorado Works Child Care Referral Form.

E. County residency shall be verified by the county Colorado Works Program.

F. Citizenship, age, and identity of the child(ren) for whom care is requested are verified by the county Colorado Works Program. The Colorado Works Child Care Referral serves as verification of citizenship, age, and identity, for CCCAP eligibility and the referral must be maintained in the child care case file.

G. ~~Immunization verification~~ Verification of immunization or religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements) must be provided to the child care technician for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age ~~must be provided to the child care technician~~. The immunization verification ~~and shall~~ must be maintained in the child care case file.

H. Counties that provide Colorado Works Child Care for households approved for Colorado Works state diversions require the same eligibility as outlined in this rule section~~above~~.

I. The county Colorado Works worker ~~shall~~ must notify the child care technician in writing of changes to the level of child care services. Decreases in child care services ~~shall~~ must only be acted upon if it is at the request of the adult caretaker or teen parent. If the county Colorado Works worker processes the child care case, written verification is not required but changes must be clearly documented in CHATS.

J. The adult caretaker or teen parent or the county Colorado Works worker must report ~~A~~a change in child care provider ~~shall be reported~~ to the child care technician ~~by the adult caretaker or teen parent or the county Colorado Works worker~~ prior to the change.

K. The county child care technician ~~shall~~ must advise adult caretaker(s) or teen parent(s) who are receiving Colorado Works Child Care of their responsibilities in writing via the Department's Client Responsibilities Agreement at the time of the initial referral.

L. If the adult caretaker or teen parent moves out of the county in which they are actively receiving Colorado Works Child Care during the twelve (12) month period:

1. The originating county child care staff shall notify the receiving county within ten (10) business days of being notified that the adult caretaker or teen parent has moved.

2. Upon receipt of notification from the originating county, the receiving county shall, at a minimum, initiate or maintain the Colorado Works Child Care case for the remainder of the twelve (12) month period ~~at a minimum~~.

3.11706.2 TRANSITION OFF COLORADO WORKS CHILD CARE

Counties shall transition households that are no longer eligible for the Colorado Works Program and are participating in a low-income eligible activity as defined in rule section 3.103(NN) to Low-Income Child Care without requiring the household to complete the low-income child care application. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in rule section 3.1105.3.

A. A household that is no longer eligible for the Colorado Works Program shall not be automatically transitioned to Low-Income Child Care if any of the following conditions apply. ~~:~~If a household is not transitioned to Low-Income Child Care for any of the conditions below, the county shall provide timely written notice to the primary adult caretaker or teen parent.

1. The household is ineligible for the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB); ~~or,~~

2. The household is ineligible for the Colorado Works Program and will be at an income level that exceeds eighty-five percent (85%) of the State Median Income (SMI) as outlined in rule section 3.1105.1~~.~~(H)~~.~~(1); or~~,~~

3. If the child has had twenty-two (22) or more unexplained absences from authorized care within the last thirty (30) days prior to the household being determined ineligible for Colorado Works and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made within the thirty (30) day period.

~~4. If a household is not transitioned to Low-Income Child Care for the reasons outlined above, the county shall provide timely written notice.~~

B. Households shall be determined eligible to transition to Low-Income Child Care based on the information and verification that is provided to the child care technician by the county Colorado Works worker upon receipt of the ~~state~~Department-prescribed Colorado Works Child Care Referral Form. No additional verification shall be required until the household's twelve (12) month re-determination for Low-Income Child Care. Child citizenship status, age, and identity must not be re-verified at the time of the Low-Income Child Care re-determination if it was previously verified using the Colorado Works Child Care Referral Form.

C. If a household becomes ineligible for Colorado Works while in a low-income eligible activity other than job search as defined in rule section 3.103(NNN), the adult caretaker or teen parent shall be transitioned to Low-Income Child Care. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in rule section 3.1105.3.

D. If a household becomes ineligible for Colorado Works while participating in a job search activity or is not in a low-income eligible activity as defined in rule section 3.103(OO), the adult caretaker or teen parent shall be transitioned to Low-Income Child Care and entered into the Low-Income Job Search activity ~~provided~~ for a minimum of thirteen (13) weeks ~~of job search~~.

E. If ~~an increase in household income is reported by~~ the county Colorado Works worker reports an increase in household income at the time of transition to Low-Income Child Care, the county child care technician shall document the income increase in case comments but shall not act upon the change until the household's twelve (12) month re-determination for Low-Income Child Care.

F. Parent fees for households that transition from Colorado Works to Low-Income Child Care must not be assessed higher than what was determined at the most recent Colorado Works Child Care referral. Parent fee revisions for child care during the twelve (12) month period may occur as outlined in rule section 3.12411(B).

G. Households that transition from Colorado Works to Low-Income Child Care must be authorized for a minimum of twelve (12) months based on the child's need for care as long as the family remains eligible for the Low-Income Child Care program.

H. Households that transition from Colorado Works to Low-Income Child Care are subject to the Low-Income Child Care ~~rule~~ requirements outlined in rule section 3.1105.

I. County child care staff shall advise adult caretaker(s) or teen parent(s) that are transitioned from Colorado Works to Low-Income Child Care of their responsibilities in writing via the Department's Client Responsibilities Agreement at the time of transition.

~~J. If a household is not transitioned from Colorado Works to Low-Income Child Care, the county shall provide a fifteen (15) day notice.~~

~~K~~J. If at any time after being transitioned onto Low-Income Child Care the household is determined eligible for Colorado Works, re-enters into a current individualized plan, and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), the household shall be transitioned back onto Colorado Works Child Care upon receipt of the Colorado Works Child Care Referral Form.

3.118~~07~~ PROTECTIVE SERVICES CHILD CARE

A. Protective services households refers to households in which child(ren) have been placed by the county in foster home care, kinship foster home care, or non-certified kinship care, and have an open child welfare case. At the option of the county, the county may provide protective services child care utilizing Child Care Development Funds (CCDF) rather than Child Welfare funds.

B. The county worker must authorize ~~P~~protective services cases ~~must be authorized~~ for a minimum of twelve (12) months ~~by the county worker~~ based on the child's need for care ~~due to~~and the funding source.

C. Protective services child care is not twenty-four (24) hour care.

D. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado Exceptional Children's Educational Act.

~~D~~E. The ~~state~~Department-approved Protective Services Child Care Referral Form shall be completed by the county Child Welfare worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file when any of the following occur:

1. A household is determined eligible for Protective Services Child Care;

2. There are changes in household composition that affect eligibility or the need for Protective Services Child Care;

3. There are changes in the child care schedule;

4. To continue care; or~~,~~

5. A household is no longer eligible for or in need of Protective Services Child Care.

3.119~~07.1~~ ELIGIBILITY FOR PROTECTIVE SERVICES HOUSEHOLDS (COUNTY OPTION)

A. Protective services households are considered ~~to be~~ a household of one for purposes of determining income eligibility. The only countable income for a protective services household is the income that is received by the child(ren) that have been placed in kinship or foster care. Child support income shall not be included as income. Child support income is intercepted by the county child welfare department.

B. Protective services households shall be allowed up to sixty (60) days to provide verification of the child(ren)'s income.

C. As determined by the Child Welfare worker, the income requirement for protective services households may be waived on a case-~~-~~by-~~-~~case basis. If the income requirement is waived, it must be documented in the child care case file.

D. Protective services households are not subject to low-income eligible activity requirements.

E. Protective services households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

F. Citizenship, age, and identity shall be verified by the Child Welfare worker. The signed Protective Services Child Care Referral serves as verification of citizenship, age, and identity and must be maintained in the child care case file. If the Child Welfare worker is unable to attest to having verified the child's citizenship status, age, and/or identity at the time of referral:

1. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s U.S. citizenship status and age;

2. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s identity; and,

3. If the Child Welfare worker cannot verify and attest to the child's citizenship status, age, or identity within six (6) months of the referral, the county must not provide child care services for the child(ren) through the use of Protective Services Child Care.

G. Protective services households must be allowed up to sixty (60) days to provide verification of immunization or religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements) if child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home.

H. If the child(ren) on the Protective Services Child Care case receives care from a licensed child care provider, the county may reimburse the child care provider for additional absences and/or holidays beyond what would be paid for a Low-Income, Colorado Works, or Child Welfare Child Care case. The number of additional absences shall be paid in accordance with the Protective Services Child Care policy set by the county and approved by the ~~State~~ Department.

3.12~~008~~ CHILD WELFARE CHILD CARE

A. Child Welfare Child Care is used as a temporary service to maintain children in their own homes or in the least restrictive out-of-home care setting when there are no other child care options available. This may include parents, non-certified kinship care, kinship foster care homes, and foster care homes.

B. Child Welfare Child Care is not twenty-four (24) hour care.

C. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado Exceptional Children's Educational Act.

~~C~~D. Eligibility for Child Welfare Child Care is determined on a case-by-case basis by the Child Welfare division using the criteria outlined in Colorado Department of Human Services rules at 12 CCR 2509-4, rule section~~s~~ 7.302 (July 31, 2023), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the

Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us/ccr. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

~~D~~E. Child Welfare Child Care households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

~~E~~F. The county shall not provide Child Welfare Child Care utilizing the Child Care Development Fund ~~CCDF~~.

3.12~~09~~10 ELIGIBILITY FOR FAMILIES EXPERIENCING HOMELESSNESS

A. Households shall meet the definition of families experiencing homelessness in rule section 3.103(XX), above.

B. Households that meet the definition of "families experiencing homelessness" ~~shall~~ must be provided a child care authorization during a stabilization period of at least sixty (60) consecutive calendar days, within a twelve (12) month period, to allow the household the opportunity to submit verification for ongoing child care ~~subsidies~~benefits.

1. If verifications necessary to determine ongoing eligibility are received by the county within the stabilization period, the household will continue to receive subsidized child care. If verifications necessary to determine ongoing eligibility are not received by the county within the stabilization period, the household will be determined ineligible and given timely written notice of ~~proper~~ adverse action ~~notice~~.

2. Subsidized care provided during the stabilization period is considered non-recoverable by the county unless fraud has been established.

3. Eligible activity

   a. The adult caretaker(s) or teen parent(s) is not required to participate in a low-income eligible activity during the stabilization period.

   b. If the adult caretaker(s) or teen parent(s) is participating in a low-income eligible activity, they will have at least sixty (60) days to provide necessary verification.

4. Residency

   a. The adult caretaker(s) or teen parent(s) shall self-declare residency during the stabilization period by providing the location they are temporarily residing. Counties shall identify the zip code of this location in CHATS.

   b. The adult caretaker(s) or teen parent(s) may provide a mailing address or the county shall use general delivery or the county office address for client correspondence.

5. The adult caretaker(s) or teen parent(s) may self-declare citizenship, age, and identity of the child(ren) during the stabilization period.

   a. A child's citizenship status, age, and identity are considered ~~to be~~ verified at the end of the stabilization period if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the

county determines that the declaration of citizenship, age, and/or identity is inconsistent.

b. The county must request additional verification at the end of the stabilization period if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

1) ~~i~~If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application, or on previous applications;

2) ~~i~~If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

3) ~~i~~If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

6. If child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home, the requirement to provide the county with verification of immunization status shall not be required during the stabilization period.

~~3.110~~ CHILD CARE ASSISTANCE PROGRAM WAIT LISTS AND ENROLLMENT FREEZES

3.122~~10.1~~ WAIT LISTS

A. A county may apply to the ~~state~~ Department to implement a wait list when:

1. ~~State~~Department-generated projections indicate that a county's allocation will be at least eighty-five percent (85%) expended by the end of the fiscal year; or~~,~~

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the ~~state~~Department-generated projections for county CCAP expenditures, such as, but not limited to, drastic economic changes.

B. Once approved, counties shall maintain a current and accurate wait list in CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

1. Counties shall require families to complete a Low-Income Child Care application in its entirety and enroll eligible adult caretakers and teen parents from wait lists according to the following ~~state~~ Department-defined target populations:

a. Households whose income is at or below 130% of the current federal poverty ~~guidelines~~level;

b. Children with additional care needs; and~~,~~

c. Families experiencing homelessness.

2. Counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.123~~10.2~~ ENROLLMENT FREEZES

A. A county may apply to the ~~state~~ Department to implement a freeze when:

1. ~~State~~Department-generated projections indicate that a county's allocation will be at least ninety-five percent (95%) expended by the end of the fiscal year; or~~,~~

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the ~~state~~Department-generated projections for county CCCAP expenditures, such as, but not limited to, drastic economic changes.

B. Counties that have been approved to implement a freeze shall add adult caretakers and teen parents into CHATS if they are likely to be found eligible based on self-reported income and job, education, job search, or workforce training activity. Counties shall require an applicant to restate ~~his or her~~their intention to be kept on the freeze every six (6) months in order to maintain ~~his or her~~their place on the list.

1. Counties shall enroll eligible adult caretakers and teen parents once a freeze is lifted according to the following ~~state~~ Department-defined target populations:

a. Households whose income is at or below 130% of the current federal poverty ~~guidelines~~level;

b. Children with additional care needs; and~~,~~

c. Families experiencing homelessness.

2. Once a freeze is lifted, counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.12~~4~~11 PARENT FEES

A. Parent fees are based on gross countable income for the child care household compared to the household size, taking ~~and in consideration of~~ the number of children in care into account. Parent fees ~~are to~~must be calculated in whole dollars by dropping the cents. Counties must provide ~~Notice~~ provide ~~families of~~ with written notice of their parent fee at the time of Colorado Works Child Care referral; low-income application or re-determination; or when a reduction/increase of household parent fee occurs.

B. Parent fee revisions for Low-Income and Colorado Works Child Care during the twelve (12) month eligibility period may occur ~~when~~under the below circumstances. Increases in parent fees beyond what is outlined in rule subsections (1)-(4) below shall only go into effect at Low-Income Child Care re-determination or at the end of the twelve (12) month Colorado Works Child Care period.~~:~~

1. The adult caretaker or teen parent, who was initially determined eligible with countable income, regains income after a temporary loss of income;

2. A change has been reported that results in a decrease in ~~household~~ the parent fee for the household;

3. There is an increase or decrease in the amount of care that is authorized and the increase in authorization is not due to the addition of a household member;

4. The household begins or ceases utilization of care at a high-quality child care provider; or

5. ~~Increases in parent fees beyond what is outlined in numbers (1) (4) of this rule subsection shall only go into effect at Low-Income Child Care re-determination or at the end of the twelve (12) month Colorado Works Child Care period~~.

C. During the twelve (12) month eligibility period the household parent fee ~~may~~ cannot be assessed higher than ~~what was~~the parent fee determined at the most recent Colorado Works Child Care referral or low-income application or re-determination.

D. Parent fees for Low-Income Child Care cases ~~shall~~ must be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment or a change in the adult caretaker(s)' or teen parent(s)' regular monthly income. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker's current income level. Income may be divided by a weekly amount then multiplied by 4.33 to arrive at a monthly average for parent fee calculations.

E. Colorado Works households in a paid employment activity shall pay parent fees based on gross countable income as verified and shared by the local Colorado Works program.

F. Parent fees for Colorado Works Child Care cases shall be reviewed at the end of the household's twelve (12) month eligibility period. An adjusted parent fee shall be based on gross countable income as verified and shared by the local Colorado Works Program.

G. ~~As defined by county policy, a~~A county may waive the parent fee for a Low-Income or Colorado Works Child Care household that has a child that is dually enrolled in a Head Start or Early Head Start Program.

H. For a Low-Income or Colorado Works Child Care household utilizing a child care provider in the top three levels of the 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.

I. All adult caretaker~~(s)~~ and teen parents are required to pay the parent fee as determined by the formula listed in rule section 3.12~~4~~11 (P), except in the following cases:

1. When ~~O~~one or two teen parent households who are in middle/junior high, high school, GED, or vocational/technical training activity and ~~for whom~~ payment of a fee produces a hardship, the parent fee may be waived entirely and documented in the case file. The parent fee waiver shall be reviewed during each re-determination.

2. The Low-Income or Colorado Works Child Care household is eligible for a reduced parent fee based on the quality level of the child care provider.

3. Colorado Works households where the adult caretaker or teen parent has entered into a current individualized plan and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), above, other than paid employment, shall not have a parent fee.

4. Child Welfare Child Care households as defined in the Social Services rule manual, rule section ~~7.000.5~~7.302 (12 CCR 2509-~~4~~1), incorporated by reference in rule section 3.103 (X), above, shall not have a parent fee.

5. Families Experiencing Homelessness as defined in rule section 3.12109 shall not have a parent fee during the stabilization period.

6. Protective service households as defined in rule section 3.11807 shall not have a parent fee unless the child(ren) has countable income.

7. Families that have no income shall have no parent fee.

8. Effective April 1, 2020, parent fees, as assessed by the parent fee formula, may be waived in the event of a declared state or local disaster or emergency for up to twelve (12) months for households impacted by such disaster or emergency. The county shall document the decision to waive the parent fee and the amount of time the parent fee will be waived in the case record in the Child Care Automated Tracking System (CHATS).

J. The initial or revised parent fee shall be effective the first full calendar month after the end of the timely written notice period unless the revision results in a decrease to the parent fee. A parent fee shall not be assessed or changed retroactively unless in the event of an emergency or disaster as outlined in rule section 3.12411 (H)(8), and, under those circumstances a county may only retroactively waive the parent fee to the beginning of the current month.

K. The fee must be paid in the month that care is received and shall be paid by the parent directly to the child care provider(s). Parent fees are used as the first dollars paid for care. The counties or their designee shall not be liable for the fee payment.

L. When more than one child care provider is being used by the same household, child care staff shall designate to whom the adult caretaker(s) or teen parent(s) pays a fee or in what proportion the fee shall be split between child care providers. The full parent fee shall be paid each month, but parent fees shall not exceed the reimbursement rate by CCCAP. The adult caretaker(s) or teen parent(s) shall determine if it is most beneficial to close their CCCAP case if the parent fee exceeds the cost of care.

M. Adult caretakers or teen parents will be informed of their responsibilities related to fee payment on their signed application form or via the Client Responsibilities Agreement that is provided to them at the initial Colorado Works referral or at the time of transition from Colorado Works to Low-Income Child Care.

N. Loss of eligibility for child care subsidies benefits may occur at re-determination or at the end of the twelve (12) month Colorado Works Child Care Period if the adult caretaker(s) or teen parents do not pay their parent fees; do not make acceptable payment arrangements with the child care providers; or, do not follow through with the arrangements during the twelve (12) month eligibility period. Notice of termination for such loss of eligibility shall be given in accordance with rule section 3.1105.4. Child care providers shall report nonpayment of parent fees no later than sixty (60) calendar-days after the end of the month following the month the parent fees are due unless county policy requires it earlier. If a household's benefits are terminated at re-determination for non-payment of parent fees, that household will remain ineligible until:

1. Delinquent parent fees are paid in full;

2. Adequate payment arrangements are made with the child care provider to whom the fees are owed and an agreement is signed by both parties; or

3. County determination of verified good faith efforts to make payment to the child care provider(s), when the client was unable to locate the child care provider(s).

O. The adult caretaker(s) or teen parent(s) and child care provider(s) shall be given timely written notice of the parent fee amount, on the child care notice of authorization, at least fifteen (15) calendar-days prior to the first of the month the parent fee is effective.

P. Beginning July 1, 2021, through September 30, 2024, the county must assess parent fees based upon a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the federal poverty guidelines (FPG) outlined in rule section 3.1105.1 (H)(2).

1. The county must assess a parent fee of one percent (1%) of gross income to eligible households with gross income that is at or below one hundred percent (100%) of the FPG.

2. For eligible households with gross income that is above one hundred percent (100%) of the FPG, the county must assess a parent fee at one percent (1%) of their income plus a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the FPG.

3. An additional fifteen dollar ($15) fee shall be added to the parent fee for each additional child when households are requesting care for more than one (1) child and have income above one hundred percent (100%) of the FPG. If care is only requested for one (1) child, the additional fifteen dollar ($15) fee does not apply.

Q. Counties shall use the FPG and state median income limit as defined in rule section 3.1105.1 (H) (2). Counties shall update parent fees at the next scheduled re-determination according to the parent fee formula table outlined in rule section 3.12411 (P), in effect on the date of redetermination.

R. Parent fees, as assessed by the parent fee formula, may be reduced to five dollars ($5) for hardship reasons for up to six (6) months per hardship award. The county director or his/her designee shall approve fee reductions and a written justification placed in the case file and noted in the case record in the Child Care Automated Tracking System (CHATS). Any hardship award may be extended so long as justification for extending the hardship award exists.

S. The Department shall notify counties at the beginning of each federal fiscal year of the current FPG and State Median Income limit as outlined in rule section 3.1105.1 (H) (2). Counties shall update parent fees at the next scheduled re-determination or at the end of the twelve (12) month Colorado Works Child Care Period.

T. When all children in a household are in part-time care, the parent fee shall be assessed at fifty-five percent (55%) of the above-calculated fee. Part-time care is defined as an average of less than thirteen (13) full-time equivalent units of care per month.

U. When parent fees fluctuate between part-time and full-time, due to the authorized care schedule, the parent fee should be assessed at the lower rate if the majority of the months in the twelve (12) month eligibility period calculate to part-time care.

V. Children enrolled in grades one (1) through twelve (12) that are authorized for part-time care during the school year must have a part-time parent fee.

W. One or two teen parent households for whom payment of a parent fee produces a hardship may have their fee waived entirely. The parent fee waiver shall be documented in the case file and reviewed during each subsequent re-determination.

3.12512 COUNTY RESPONSIBILITIES

A. Counties shall administer CCCAP in compliance with Department fiscal and program regulations and in accordance with the terms associated with their allocation. Counties will be allocated child care funds annually.

B. Counties or their designee shall establish administrative controls to ensure appropriate internal controls and separation of duties (this means that the same employee shall not authorize and process payment for child care services). If these administrative controls create a hardship for the county, the county shall submit a waiver request and an internal county policy to the Department for approval. In no event will the Department approve a waiver of controls specified in federal or state statute or regulation/rule.

C. Counties must use the forms required by the Department. Counties may add additional language to ~~state~~ Department forms but shall not remove language. This does not include the Low-Income Child Care application or re-determination. All changes to Department forms shall be submitted to and approved by the Department prior to use.

D. Counties shall respond to requests from the Department within two (2) business days.

E. Counties shall make reasonable efforts to advise county residents of services available to target groups through press releases, presentations, pamphlets, and other mass media.

F. Counties must use CHATS to administer CCCAP. Counties who do not use CHATS as prescribed by the Department may not be reimbursed.

G. Counties shall establish controls over which county staff have the authority to override eligibility in CHATS. All overrides of eligibility shall be accompanied by documentation in CHATS.

H. Counties must document in CHATS actions and contacts made under the appropriate comment screen, within two (2) business days of case action or contact.

I. Counties must code child care expenditures to the appropriate program, as prescribed by the Department. Failure to do so may result in non-reimbursement or other actions as deemed appropriate by the Department.

J. Counties shall monitor expenditures of Child Care funds and may suspend enrollments, as necessary, to prevent over-expenditures in child care. “Reimbursable expenditures” are supported in whole or in part by the State General Fund, Federal (pass through) money, or a combination of State and Federal money.

K. Counties shall be responsible for the provision of a safe place for storage of case records and other confidential material to prevent disclosure by accident or as a result of unauthorized persons other than those involved in the administration of the CCCAP program. Data of any form shall be retained for the current year, plus the three (3) ~~previous~~ immediately preceding years, unless:

1. A statute, rule or regulation, or generally applicable policy issued by a county, state or federal agency that requires a longer retention period; or~~,~~

2. There has been a recovery, audit, negotiation, litigation or other action started before the expiration of the three (3) ~~-~~year period.

3. If a county shares building space with other county offices, it shall use locked files to store case material and instruct facility and other maintenance personnel concerning the confidential nature of information.

L. Counties shall post eligibility, authorization, and administration policies and procedures so they are easily accessible and readable to the layperson. The policies shall be sent to the Department for compilation.

M. Counties shall provide consumer education to adult caretakers, teen parents, child care providers and the general public as required by the Department including but not limited to:

1. Information on all available types of child care providers in the community: centers, family child care homes, qualified exempt child care providers and in-home child care.

2. Information regarding voter registration.

3. Information on family support services including but not limited to:

a. Colorado Works;

b. Head Start and Early Head Start;

c. Low-Income Energy Assistance Program (LEAP);

d. Food Assistance program (SNAP);

e. Women, Infants and Children (WIC) program;

f. Child and Adult Care Food program (CACFP);

g. Medicaid And State Children's Health Insurance Program;

h. Housing Information;

i. Individuals with Disabilities Education Act (IDEA) programs and services; and

j. Child Support Services.

4. Counties shall also provide information and referrals to services under early and periodic screening, diagnosis, and treatment (EPSDT) under Medicaid and Part C of IDEA 34 CFR Part 300 (April 2023). Herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202, or at https://www.ecfr.gov. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

5. Counties shall collect information on adult caretaker(s) or teen parent(s) receiving programs services listed in rule section 3.1~~25~~12, (M), (3)-(4) via the Low-Income Child Care application and shall enter the information into CHATS for reporting purposes.

N. Once determined eligible for Low-Income Child Care, households should remain eligible for a minimum of twelve (12) months. Counties shall not discontinue child care services prior to a household's next eligibility re-determination unless:

1. The household's income exceeds eighty-five percent (85%) of the State Median Income;

2. The adult caretaker(s) or teen parent(s) is no longer in a qualifying low-income eligible activity for the reasons that do not constitute a temporary break as defined in rule section 3.1105.2.(C);

3. The adult caretaker(s) or teen parent(s) no longer reside(s) in the state;

4. The adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined in rule section 3.1105.1.(G) are not considered to be in a low-income eligible activity;

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care; or

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation.

O. Counties shall provide written wait list and freeze policies to the Department for review and approval at the time of county plan submission. Approved county CCCAP plans can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families

P. Counties shall maintain a current and accurate wait list in CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

Q. Counties shall review current applications for completeness, approve or deny the application, and provide timely written notice to the adult caretaker(s) or teen parent(s) of approval, or of missing verifications, no more than fifteen (15) calendar-days from the date the application was received by the county. Applications are valid for a period of sixty (60) calendar-days from the application date.

1. If verifications are not received within the fifteen (15) day noticing period the application will be denied.

2. If verification is received within sixty (60) calendar-days of the application date, counties will determine eligibility from the date the current verification was received if the eligibility criteria ~~is~~ are met.

3. If verification has not been completely submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

R. Upon review of an application that was directed to the wrong county of residence, the receiving county shall forward the application and any verification within one (1) business day to the correct county. The county shall provide notification to the adult caretaker(s) or teen parent(s) that their application has been forwarded to the correct county.

S. Counties may access information already available on file or through system interfaces from other assistance programs within their county to use in child care eligibility determination at application and/or re-determination. Counties shall place a copy of this verification in the case file and/or make a notation in CHATS regarding the verification as appropriate.

T. Counties shall obtain verification immunization record to the county, indicating that the children are age-appropriately immunized or have a religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements)~~immunization records~~ for children who

receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home, and the child(ren) are not school age at application and re-determination.

U. Counties are encouraged to use collateral contact whenever possible to verify information needed to determine eligibility, not including citizenship, age, and identity.

V. Counties must use preponderance of evidence when verifying a child's citizenship status, age, and identity at application and/or re-determination, only requiring additional verification if the adult caretaker or teen parent's declaration is inconsistent according to the following guidelines:

1. If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application/redetermination, or on previous applications/re-determinations;

2. If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or

3. If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

W. Counties shall not require Social Security Numbers or cards for household members who apply for child care assistance.

X. Counties must use the prudent person principle (PPP) to benefit families and child care providers when determining eligibility, authorizing care, entering into a fiscal agreement, and reimbursing child care providers for care that was not automatically processed through ~~chats~~CHATS. An explanation of why and how the county used PPP must be documented in the appropriate notes section(s) of CHATS.

Y. Counties or their designee shall verify the residence of any adult caretaker(s) or teen parent(s) receiving or applying for Low-Income Child Care assistance to ensure that they live in the county where they are applying for assistance at the time of application or re-determination. For families experiencing homelessness, refer to rule section 3.12109.

1. Verification of address may include but is not limited to:

a. Rent receipt/lease;

b. Mortgage statement;

c. Utility or other bill mailed no more than two (2) months previously;

d. Voter registration;

e. Automobile registration;

f. A statement from the person who leases/owns the property;

g. Documentation from schools such as verification of enrollment, report card, or official transcript mailed no more than two (2) months previously;

h. Official correspondence from any other government agency (e.g., IRS) mailed within the past two (2) months;

i. A statement from another department in your agency if they have verified the residence (e.g., Child Welfare, collateral contact); or

j. Paycheck stub received within the past two months.

2. If the county of residence is questionable, a secondary means of verification may be requested such as but not limited to:

a. Records from the local county clerk and recorder's office; or

b. Records from the local county assessor's office.

Z. County child care staff shall advise low-income adult caretaker(s) or teen parent(s) of their responsibilities in writing at application and re-determination. Information that adult caretaker(s) or teen parent(s) must report during the twelve (12) month eligibility period as follows:

1. Changes to income, if the household's income exceeds eighty-five percent (85%) of the State median income shall be reported within ten (10) calendar-days of the change.

2. Changes to an adult caretaker(s) or teen parent's qualifying low-income eligible activity, which does not qualify as a temporary break as defined in rule section 3.1105.2.(C), must be reported within four (4) calendar weeks.

AA. Counties shall process any reported change and/or required verification within ten (10) calendar days of receiving the information using the following guidelines:

1. Changes reported during the twelve (12) month low-income eligibility period requiring immediate action:

a. Changes to income, if the household's income exceeds eighty-five percent (85%) of the state median income;

b. Changes to an adult caretaker or teen parent's qualifying low-income eligibility activity, which does not qualify as a temporary break as defined in rule section 3.1105.2.(C);

c. Changes in parent fee per rule section 3.12111

d. Changes in state residency; and

e. Changes that are beneficial to the household such as, but not limited to:

1) An increase in authorized care;

2) A change of child care provider;

3) Change in household composition due to an additional child requesting care; and

4) Change in mailing address.

2. Changes outside of the above guidelines should be documented in CHATS but shall not be acted upon until the adult caretaker or teen parent's re-determination.

BB. If the adult caretaker(s) or teen parent(s) moves out of the county in which they are actively receiving Low-Income Child Care assistance benefits during the twelve (12) month eligibility period; remains below eighty-five percent (85%) of the state median income; and, remains in a low-income eligible activity as defined in the originating county's county plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families ,the originating county shall maintain the case, authorization(s), and fiscal responsibility until the re-determination date that was previously determined;

1. The originating county shall be responsible for initiating and/or maintaining the fiscal agreement for the child care provider that the family utilizes for care in accordance with rule section 3.134~~15.5~~ for the remainder of the twelve (12) month eligibility period. If the originating county does not have an active fiscal agreement with the chosen child care provider at the time of exit, the child care provider's fiscal agreement shall be entered using the county ceiling rates of the county in which the provider is located.

2. At the time of re-determination, the receiving county shall re-determine the household's eligibility per rule section 3.11~~05.~~3 without requiring the household to re-apply.at the time of re-determination the originating county shall issue the eligibility re-determination form to the household per rule section 3.11~~05.~~3 and direct the family to return the completed form to the receiving county. To mitigate service interruptions, the originating county shall notify the receiving county of the re-determination and their responsibilities of redetermining eligibility.

3. The child care case may be closed if at the time of re-determination the family does not meet the eligible activity requirements of the receiving county.

4. If the receiving county has a wait list at the time of re-determination, a family may be placed onto that county's wait list provided they are not a part of the county defined target populations.

CC. Counties shall respond to requests for information or assistance from other agencies within five (5) business days.

DD. Counties must review and take action on current re-determinations by reviewing for completeness~~,~~; approving~~e~~ or denying~~y~~ the re-determination~~,~~; and ~~provide~~ providing timely written notice to the adult caretaker(s) or teen parent(s) of approval, or of missing verifications, no more than fifteen (15) calendar days from the date the re-determination was received by the county. The county must notify the adult caretaker(s) or teen parent(s) in writing that they have fifteen (15) calendar days from the date the notice is mailed to provide the required missing verifications. If verifications are not received within the fifteen (15) day noticing period, the re-determination will be denied.

EE. Whenever possible in processing re-determinations of eligibility for adult caretaker(s) or teen parent(s) currently receiving Low-Income Child Care, counties shall use information that is already available in other sources to document any verification including citizenship, age, and identity if the adult caretaker or teen parent's declaration is inconsistent in accordance with rule section 3.125~~12~~(V).

FF. 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 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.

GG. Reports of unpaid parent fees shall be documented on the case and the county shall not take action on a report of unpaid parent fees until re-determination. If the unpaid parent fee is reported outside of the required reporting period outlined in rule section 3.1281~~4.2~~ (Q), the county shall not take any action. If at the time of re-determination, the parent fee remains unpaid and acceptable payment arrangements have not been made with the child care provider, the household shall remain ineligible until:

1. Delinquent parent fees are paid in full;

2. Adequate payment arrangements are made with the child care provider to whom the fees are owed and an agreement is signed by both parties; or

3. County determination of verified good faith efforts to make payment to the child care provider(s), when the client was unable to locate the child care provider(s).

HH. Counties shall authorize care based on verified need, by establishing an authorization to cover the maximum amount of units needed to ensure care is available based on the adult caretaker or teen parent's participation in an eligible activity, and shall not be linked directly to the adult caretaker or teen parent's activity schedule and should be based on the child's need for care.

II. Counties are encouraged to blend Head Start, Early Head Start and CCDF funding streams by authorizing care based on the child's need for care, regardless of the child's Head Start or early Head Start enrollment status, in order to provide seamless services to children dually enrolled in these programs.

JJ. Counties shall align the Low-Income Child Care re-determination date with the Head Start or Early Head Start program year upon notification that a child is enrolled in a Head Start or Early Head Start program. The re-determination date shall not occur any earlier than twelve (12) months from the application date.

KK. With regard to services to students enrolled in grades one (1) through twelve (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. Exceptions to this may include but are not limited to:

1. When a child is temporarily prohibited from attending their regular classes due to a suspension or expulsion;

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.

LL. The authorization start date shall be the date a Low-Income Child Care case is determined eligible, except in the case of a pre-eligibility application. If the child will receive care from a qualified exempt child care provider, the authorization start date shall not be prior to the date the criminal background check has been completed and cleared.

MM. For pre-eligibility care reimbursable after eligibility has been determined and the county can provide ~~subsidy~~ benefits for the potential program participant, authorization shall be dated to the date the pre-eligibility application was received by the county.

NN. The county shall generate a Department-approved notice regarding changes to child care ~~subsidies~~ benefits within one (1) business day and provide to the primary adult caretaker, teen parent and child care provider via postal service, e-mail or other electronic systems, fax, or hand-delivery.

OO. If verification that is needed to correct the reason for closure of a child care case is received within thirty (30) calendar-days after the effective date of closure, eligibility shall be determined as of the date the verification was received regardless of any break in service period.

PP. The county shall generate Attendance Tracking System registration for the household upon case approval or initial authorization.

QQ. The county shall generate Attendance Tracking System registration for child care providers when a fiscal agreement with a provider is opened.

RR. The county shall make available the following child care provider information, including protective services information, to all staff whose responsibilities include child care ~~subsidy~~ benefit services:

1. Information known to licensing staff.

2. Information from previous agency contacts.

3. Information obtained from the ~~F~~ffiscal ~~A~~aagreement renewals.

4. Information obtained from adult caretaker(s) or teen parent(s), caseworker visits, and other sources.

5. Information about corrective action intervention by the counties, their designee(s), or the Department.

SS. The counties or their designee will complete an annual review of the state-administered system for child abuse and neglect on the qualified exempt child care provider(s) and any individual(s) in the qualified exempt child care provider's household who is eighteen (18) years and over not including the adult caretaker(s) or teen parent(s) if care is provided in the qualified exempt provider's home.

TT. Counties shall maintain a copy of the non-relative qualified exempt provider's health and safety report of inspection in the provider file. The report of inspection shall be made available to the client upon request to the county or the Department.

UU. Upon notification to counties by the Department that the relevant systems are capable of accommodating this review, the counties or their designee shall screen the qualified exempt child care provider(s) and any other adult eighteen (18) years of age and older, not including the adult caretaker(s) or teen parent(s), for current or previous adverse county contact, including but not limited to, allegations of fraud or IPV.

VV. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates.

WW. The state-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.

XXZZ. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, or e-mail or other electronic systems.

YY. Counties shall make fiscal agreements effective the date that the county receives the completed and signed fiscal agreement from the provider. Fiscal agreements shall be:

1. One (1) year in length for qualified exempt child care providers

2. Three (3) years in length for licensed child care providers

ZZ. Counties shall reimburse providers at the rate set by the Department.

AAA. Prior to approving a fiscal agreement with any child care provider, the county shall compare the child care provider's private pay rates to the county's reimbursement rates set by the Department. The CCCAP reimbursement rate paid to the provider by the county must be the lesser of the two.

BBB. Counties shall:

1. Have fiscal agreements signed by the child care provider and county staff prior to opening them in CHATS;

2. Enter a completed fiscal agreement into CHATS within five (5) business days of receipt; and;

3. Provide a copy of the fully executed fiscal agreement to the child care provider within seven (7) calendar days of the CHATS entry.

CCC. Counties shall not make changes to their county ceiling rates more than every twelve (12) months unless instructed to do so by the Department.

DDD. Counties shall update CHATS and notify a provider via rate notification within fifteen (15) business days after a child care technician has received a system generated quality rating change notification indicating that a provider has had a change in their quality rating.

EEE. Counties shall verify that child care providers are not excluded from receiving payments prior to signing a fiscal agreement. The county shall make this verification check through the Excluded Parties List System (EPLS) established by the General Services Division on the website at: www.sam.gov.

FFF. Counties shall process complete manual claim forms in CHATS within twenty-one (21) calendar days of receipt for payments that were not automatically processed through CHATS. If processing of the complete manual claim form is delayed for any reason, the county shall notify the child care provider(s) in a timely manner and document the circumstances in CHATS.

GGG. In any cases where payments to licensed child care providers or qualified exempt child care providers are delayed more than three (3) calendar months past the end of the month care was provided, county-only money that was not allocated by the Department shall be used to pay for this care.

HHH. Counties shall ensure that child care providers are not charging the county more than the child care provider's established private pay rates.

III. County offices shall complete a random monthly review of attendance data for at least one percent (1%) or one provider, whichever is greater. The county or its designee shall take necessary action as defined in the county fraud referral process if the review indicates:

1. That the child care provider(s) may have submitted an inaccurate report of attendance for a manual claim, the county or its designee shall contact the child care provider(s) and adult caretaker(s) or teen parent(s) to resolve the inaccuracy.

2. That either the adult caretaker(s) or teen parent(s) or the child care provider has attempted to defraud the program or receive benefits to which they were not eligible. The county or its designee shall report that information to the appropriate legal authority.

JJJ. Counties shall refer, within fifteen (15) calendar-days of establishing recovery, to the appropriate investigatory agency and/or the district attorney, any alleged discrepancy which may be a suspected fraudulent act by a household or child care provider ~~of services~~.

KKK. In collecting evidence of fraudulent activities, the counties or their designee shall not violate the legal rights of the individual. When the county has questions about whether an action it contemplates might violate the legal rights of the individual, it ~~shall~~should seek the advice of its legal advisor.

~~KKK~~LLL. Counties shall establish recoveries within twelve (12) months of discovery of the facts resulting in recovery.

~~LLL~~MMM. Counties shall take whatever action is necessary to recover payments when households and/or child care providers owe money to the Department because of overpayments, ineligibility and/or failure to comply with applicable state laws, rules, or procedures.

~~MMM~~NNN. Counties shall report established recoveries that are the result of legally designated or determined fraud or recoveries of five-thousand dollars ($5,000) or more to the Department.

3.12~~6~~13 PRE-ELIGIBILITY DETERMINATIONS

An Early Care and Education provider may provide services to the household prior to the final determination of eligibility and shall be reimbursed for such services only if the county determines the household is eligible for Low-Income Child Care services and there is no need to place the household on the wait list. The start date of eligibility is defined in rule section 3.12~~5~~12 (Q). If the household is found ineligible for services, the Early Care and Education provider shall not be reimbursed for any services provided during the period between their pre-eligibility determination and the county's final determination of eligibility.

The Early Care and Education provider or county may conduct a pre-eligibility determination for child care assistance for a potential program participant to facilitate the determination process.

A. The Early Care and Education provider may submit the prospective program participant's State-prescribed Low-Income Child Care application, release of information, and documentation to the county for final determination of eligibility for child care assistance. The Early Care and Education provider shall signify on the first page of the application in the space provided that a pre-eligibility determination has been made.

B. The Early Care and Education provider or county may provide services to the household prior to final determination of eligibility, and the county shall reimburse an Early Care and Education p~~P~~rovider:

1. As of the date the county receives the application from the Early Care And Education provider for such services only if the county determines the prospective program participant is eligible for services; and~~,~~

2. There is no need to place the prospective program participant on a wait list.

C. All supporting documentation for a pre-eligibility application submitted by an Early Care and Education p~~P~~rovider shall be received in thirty (30) calendar-days of the date the application was received or the application may be determined ineligible by the county. If all verifications are received between the thirty-first (31st) and sixtieth (60th) day, counties shall determine eligibility from the date the verification was received.

D. If the prospective program participant is found ineligible for services, the county shall not reimburse the Early Care and Education provider for any services provided during the period between its pre-eligibility determination and the county's final determination of eligibility.

E. If an Early Care and Education provider or county has conducted a pre-eligibility determination, they shall include documentation of the information on which the pre-eligibility determination has been made in or with the application. The documentation shall include household income, household composition, and low-income eligible activity.

F. When a county conducts a pre-eligibility determination, the county shall notify the prospective child care provider with the referral for pre-eligibility authorization that payment for care provided prior to full eligibility may not occur if the adult caretaker(s) or teen parent(s) is ultimately deemed ineligible for the CCCAP program.

G. A child care provider may refuse to serve a county pre-eligibility authorized program participant.

~~3.114~~ CHILD CARE PROVIDERS

3.1~~27~~14.1 ELIGIBLE FACILITIES

A. Licensed Facilities

The following facilities are required to be licensed and comply with licensing rules as defined in the Social Services rule manual, rule sections 7.701 through 7.712 of 12 CCR 2509-8~~)~~, incorporated by reference in rule section 3.103(X), above:

1. Family child care homes as defined in section 26.5-5-303(7), C.R.S.

2. Child care centers which are less than 24-hour programs of care, as defined in section 26.5-5-303(3), C.R.S.

B. Qualified Exempt Child Care Providers

1. Qualified exempt child care provider: A non-licensed family child care home in which less than twenty-four (24) hour care is given at any one time that meets one of the following:

   a. For a relative qualified exempt provider, any number of children directly related to the provider; or

   b. For a qualified exempt provider that is not a relative of the children in care, no more than four (4) children in care, with no more than two (2) children under the age of two (2) years at any one time.

1) if the provider's own children are in the provider's care, the provider's children count towards the maximum capacity of four (4).

c. The relationships for care outlined in (A)-(B) of this rule section include:

1) "Relative in-home care" means care provided by a relative in the child's own home by a person who is eighteen (18) years of age or older

2) "Relative out-of-home care" means care provided by a relative in another location by a person who is eighteen (18) years of age or older

3) "Non-relative in-home care" means care provided by a person, who is not a relative to the children in care, in the child's own home.

4) "Non-relative out-of-home care" means care provided by a person, who is not a relative to the children in care, outside of the child's home.

2. The counties or their designee shall register qualified exempt child care providers and include the following information: name, address (not a P.O. Box #), phone number, date of birth, and social security number or individual taxpayer identification number (ITIN). Any contract provided by an agency of a state or local government is considered a public benefit.

3. Qualified Exempt Child Care Provider Requirements

a. Qualified exempt child care provider(s) must be at least eighteen (18) years of age.

b. A qualified exempt child care provider shall not be the adult caretaker or teen parent of the child that is receiving care.

c. A qualified exempt child care provider shall not be a sibling of the child that is receiving care if living in the same residence.

d. As a prerequisite to signing a fiscal agreement with a county or its designee, a qualified exempt child care provider shall sign an attestation of mental competence. The attestation affirms that they, and any adult residing in the qualified exempt child care provider home where care is provided, has not been adjudged by a court of competent jurisdiction to be insane or mentally incompetent to such a degree that the individual cannot safely care for children.

e. A qualified exempt child care provider shall complete and sign the provider information form and the self-attestation form agreeing to participate in additional training as identified. As a part of this agreement, the provider shall not have had any of their own children removed from the home or placed in a residential treatment facility. The self-attestation form must include the signature of the adult caretaker(s) or teen parent(s) acknowledging monitoring responsibilities. A provider information form must be provided to the county and Department any time there is a new member of the provider's household.

4. Background Checks

a. A qualified exempt child care provider and any adult eighteen years of age or older who resides in the exempt child care provider's home, not including the adult caretaker(s) or teen parent(s), must be subject to a county level

background check. The information from the background check must serve only as the basis for further investigation.

b. A qualified exempt child care provider and any adult eighteen years of age or older who resides in the exempt child care provider's home, not including the adult caretaker(s) or teen parent(s), must also be subject to and pass a criminal background review as follows:

1) A review of the Federal Bureau of Investigations (FBI) fingerprint-based criminal history records pursuant for section 26.5-5-326, C.R.S.;

2) A review of the Colorado Bureau of Investigations (CBI) fingerprint-based criminal history records at application;

3) An annual review of the state administered database for child abuse and neglect;

4) An annual review of the CBI sex offender registry; and

5) The national sex offender registry public website (upon notification to counties by the Department that the relevant state and federal systems are capable of accommodating this review).

c. Information submitted to the CBI sex offender registry and the national sex offender registry public website shall include:

1) Known names and addresses of each adult residing in the home, not including the adult caretaker(s) or teen parents; and~~,~~

2) Addresses.

d. At the time of submission of the completed background check packet, as determined by state procedures, a qualified exempt child care provider shall submit certified funds (i.e., money order or cashier's check) to cover all fees indicated below.

1) A fee for the administrative costs referred to in rule section ~~2.111~~7.701.4, (F) (12 CCR 2509-8), are incorporated by reference in rule section 3.103(X), above.

A fee for each set of submitted fingerprints for any adult who resides in the home where the care is provided, eighteen (18) years of age or older, not including the adult caretaker(s) or teen parent(s), will be required. Payment of the fee for the criminal record check is the responsibility of the individual being checked unless the county chooses to cover the cost associated with the criminal record check. Counties that choose to exercise this option shall document the policy within their county plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families.

2) Counties will be notified of the date the background check has cleared and shall use that date as the effective date of reimbursement for the fiscal agreement. Child care authorizations must not begin until the background check has cleared.

e. The qualified exempt child care provider(s) may continue to receive payment as long as the qualified exempt child care provider(s) or other adult is not ineligible due to the following circumstances:

1) Conviction of child abuse, as described in section 18-6-401, C.R.S.;

2) Conviction of a crime of violence, as defined in section 18-1.3-406, C.R.S.;

3) Conviction of any felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

4) Conviction of any felony that on the record includes an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

5) Conviction of any felony involving physical assault, battery or a drug related/alcohol offense within the five years preceding the date of the fingerprint-based criminal background check;

6) Conviction of any offense in another state substantially similar to the elements described in Items 1 through 5, above;

7) Has shown a pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of misdemeanor” shall include consideration of section 26.5-5-317, C.R.S., regarding suspension, revocation, and denial of a license, and shall be defined as:

a) Three (3) or more convictions of ~~3rd~~ third degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.;

b) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of ~~3rd~~ third degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.; or,

c) Seven (7) misdemeanor convictions of any type.~~; or~~

~~d) Has been determined to be responsible in a confirmed report of child abuse or neglect.~~

8) Conviction has the same meaning as that in section 26.5-5-309(4)(A)(II), C.R.S.

~~9) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.; or,~~

~~10) Seven (7) misdemeanor convictions of any type.~~

~~11) Has been determined to be responsible in a confirmed report of child abuse or neglect.~~

5. A qualified exempt child care provider shall notify the county with whom he or she has contracted pursuant to a publicly funded state Child Care Assistance Program, within ten (10) calendar-days of any circumstances that result in the presence of any new adult in the residence.

6. If required documents are not returned within thirty (30) days, the qualified exempt child care provider shall be denied a fiscal agreement.

7. Additional requirements for non-relative qualified exempt child care providers:

   a. Completion of all pre-service health and safety trainings approved by the Department, within three months of providing services as a qualified exempt child care provider under the Colorado Child Care Assistance Program.

   b. An annual on-site health and safety inspection conducted by the Department or its designee. Non-relative qualified exempt providers shall correct any health and safety inspection standards within thirty (30) days after the inspection unless the results identify standards that must be corrected immediately.

   c. Qualified exempt non-relative child care providers shall meet the mandatory child abuse and neglect reporting requirements annually.

   d. If the non-relative qualified exempt child care provider fails to comply with any of the requirements in rule subsections (a)-(d) above, the county shall deny or terminate a fiscal agreement.

8. Qualified exempt child care providers who are denied a ~~F~~fiscal ~~A~~agreement or whose ~~F~~fiscal ~~A~~agreement is terminated may request an informal conference with county staff responsible for the action, the supervisor for that staff, and the county director or director's designee to discuss the basis for this decision and to afford the qualified exempt child care provider(s) with the opportunity to present information as to why the qualified exempt child care provider(s) feels the county should approve or continue the ~~F~~fiscal ~~A~~agreement. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date the qualified exempt child care provider is notified of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision to the qualified exempt child care provider(s) within fifteen (15) business days after the conference.

9. Non-relative qualified exempt child care providers who are denied a fiscal agreement or whose fiscal agreement is terminated due to the Department's decision regarding adherence to health and safety standards may appeal the decision to the executive director of the Department or the executive director's designee in writing within fifteen (15) days of the county's decision. The executive director's decision is a final agency decision subject to judicial review by the state district court under section~~§~~ 24-4-106, C.R.S.

10. If a qualified exempt child care provider has not had an open authorization for ninety (90) calendar days, the provider's fiscal agreement shall be closed in CHATS.

C. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, or e-mail or other electronic systems.

D. Payment Methods

1. Payment for purchased child care shall be made to the child care provider(s) through ~~an automated system~~CHATS if it is a qualified exempt child care provider(s) or licensed facility.

2. When a manual claim is needed to reimburse providers for payments that were not automatically processed through CHATS, the ~~state~~Department-prescribed child care manual claim form must be prepared and signed by the child care provider for increments of one month or less. The county shall utilize the ~~state~~ Department-prescribed manual claim form to verify that the billing is for:

a. Care that was authorized and provided;

b. Reimbursable registration fees;

c. Reimbursable activity fees;

d. Reimbursable transportation fees;

e. Reimbursable hold slots;

f. Reimbursable drop in days; and/or~~,~~

g. Reimbursable absence payments.

E. Child care providers shall be provided with a written notice of the process of termination of the fiscal agreement on the Department's fiscal agreement form.

3.128~~14.2~~ CHILD CARE PROVIDER RESPONSIBILITIES

A. Child care p~~P~~roviders shall maintain a valid child care license as required by Colorado statute unless exempt from the Child Care Licensing Act.

B. Child care p~~P~~roviders shall report to the county if their license has been revoked, suspended, or denied within three (3) calendar-days of receiving notification or a recovery will be established of all payments made as of the effective date of closure.

C. Child care providers shall report to the county and state licensing any changes in address no less than thirty (30) calendar-days prior to the change.

D. Child care providers shall report to the county and state licensing any changes in phone number within ten (10) calendar-days of the change.

E. Child care providers shall allow parents, adult caretakers, or teen parents immediate access to the child(ren) in care at all times.

F. Child care providers shall accept referrals for child care without discrimination with regard to race, color, national origin, age, sex, religion, marital status, sexual orientation, or physical or mental handicap.

G. Child care providers shall provide children with adequate food, shelter, and rest as defined in licensing rule (12 CCR 2509-8, incorporated by reference in rule section 3.103(X), above).

H. Child care providers shall ~~maintain~~ keep ~~as strictly confidential~~ all records regarding children ~~information~~ and all facts learned about ~~concerning~~ children and their relativ~~famili~~es confidential pursuant to section 26.5-5-316(4), C.R.S.

I. Child care providers shall protect children from abuse/neglect and immediately report any suspected child abuse and neglect to the county, local law enforcement agency, or the Colorado Child Abuse and Neglect Hotline ~~immediately~~.

J. Child care providers shall provide child care at the facility address listed on the fiscal agreement and ensure care is provided by the person or business listed on the fiscal agreement. Exceptions are defined in licensing rules (12 CCR 2509-8, incorporated by reference in rule section 3.103(X), above).

K. Child care providers will not be reimbursed for any care provided before the fiscal agreement start date and after the fiscal agreement end date.

L. Child care providers shall sign the fiscal agreement and all other county or state required forms. Payment shall not begin prior to the first of the month in which the fiscal agreement has been signed and received by the county.

M. Child care providers shall comply with Attendance Tracking System (ATS) requirements as defined in rule section 3.133~~15.4~~.

N. Child care providers shall develop an individualized care plan (ICP) for children with additional care needs based upon the Individual Education Plan (IEP), or Individual Health Care Plan (IHCP), and provide a copy to the county eligibility worker on an annual basis or other alternate period of time determined in the plan.

O. Licensed child care providers shall maintain proof of up-to-date immunizations for the children in their care in accordance with rule section 7.712.52~~2.200~~7.702, ~~*et seq.*~~ (12 CCR 2509-8, incorporated by reference in rule section 3.103(X), above). This rule does not apply to the following:

1. Qualified exempt child care Providers caring for children in the child's own home; or~~,~~

2. Qualified exempt child care Providers caring only for children related to the child care provider such as grandchildren, great-grandchildren, siblings, nieces, or nephews, etc.~~;~~

P. Child care Providers shall maintain paper or electronic sign in/out sheets that the person authorized to drop off/pick up the children has signed with the date, names of the children, and~~,~~ the time the children arrive and leave each day ~~they~~ the children attend care. These records shall be available for county review upon request and maintained for the current year plus the three (3) immediately preceding years.

Q. Child care providers shall report non-payment of parent fees no later than sixty (60) calendar days after the end of the month the parent fees are due unless county policy requires it earlier. The unpaid parent fees can be reported by fax, e-mail or other electronic systems, in writing, or on the billing form.

R. Child care providers shall notify the county of unexplained, frequent and/or consistent absences within ten (10) calendar-days of establishing a pattern.

S. Child care providers shall not charge counties more than their established private pay rates.

T. Child care providers shall not charge adult caretakers or teen parents rates in excess of daily reimbursement rates agreed upon in the ~~F~~fiscal ~~A~~agreement (this includes the agreed upon registration, mandatory activity, and transportation fees if the county pays these fees).

U. If a licensed child care provider chooses to charge families for absences for which the county does not provide reimbursement, they shall use the CCCAP daily reimbursement rate agreed upon in the ~~F~~fiscal ~~A~~agreement.

V. Child care providers shall offer free, age~~-~~-appropriate alternatives to voluntary activities. Child care providers shall only bill for:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and/or~~,~~

7. Reimbursable absence payments.

W. Child care providers shall bill counties monthly for payments that were not automatically processed through CHATS including but not limited to:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and/or~~,~~

7. Reimbursable absence payments

X. Payment for services shall be forfeited if the original ~~state~~Department-prescribed manual claim form is not submitted within sixty (60) calendar-days following the month of service.

Y. Reimbursable activity~~,~~ and/or transportation fees shall be billed for in accordance to the timeframe ~~in~~ which is outlined in the current fiscal agreement.

Z. Child care providers shall not hold, transfer, or use an adult caretaker or teen parent's individual attendance credentials. If intentional misuse is founded by any county or state agency, the child care provider will be subject to fiscal agreement termination as outlined in rule section 3.13~~4~~15.

3.12~~9~~14.3 COMPLAINTS ABOUT CHILD CARE PROVIDERS

Counties and the public may access substantiated complaint files regarding complaints about ~~procedures~~ matters other than child abuse at the Department, Division of Early Learning, Licensing, and~~&~~ Administration, or on the Department's website at https://cdec.colorado.gov/find-child-care.

A. Complaints about qualified exempt child care providers

Complaints shall be referred to the Department, Division of Early Learning, Licensing, and~~&~~ Administration staff or appropriate contracted agencies the same day as it is received by the county when:

1. The complaint is about a qualified exempt child care provider~~,~~ who is alleged to be providing illegal care.

2. The complaint is related to issues ~~with a qualified exempt child care provider~~ such as violation of non-~~-~~discrimination laws or denial of parent access to children in care (does not include investigation of illegal care).

B. Complaints about licensed child care providers

The following guidelines shall apply to complaints received by counties about licensed child care providers:

1. If the complaint concerns child abuse or neglect, the county shall immediately refer the complaint to the appropriate county protective services unit.

2. If the complaint concerns a difference of opinion between a child care provider and an adult caretaker(s) or teen parent(s), the counties shall encourage the child care provider and adult caretaker or teen parent to resolve their differences.

3. Complaints shall be referred to the Department, Division of Early Learning, Licensing, and~~&~~ Administration staff the same day the county receives it when the complaint is about a family child care home or child care center and is related to noncompliance with child care licensing ~~issues~~ statutes or regulations.

~~3.115~~ PURCHASE OF SERVICES

3.1~~30~~15.1 CHILD CARE PROVIDER REIMBURSEMENT RATES

The counties shall implement the state-established licensed child care provider base payment rates for each county on July first every year. In addition to establishing licensed child care provider base payment rates, the ~~state d~~Department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

A. Payment rates shall be defined utilizing the ~~state~~ Department established, system supported age bands.

B. Rate types are selected by child care provider type (licensed family child care home, licensed child care center, and qualified exempt child care providers). The Department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

C. Payments shall be made in part time/full time daily rates.

1. Part-time is defined as zero (0) hours, zero (0) minutes, and one (1) second through five (5) hours, zero (0) minutes, and zero (0) seconds per day. Part time is paid at fifty-five percent (55%) of the full time rate.

2. Full time is defined as five (5) hours, zero (0) minutes, and one (1) second through twelve (12) hours, zero (0) minutes, and zero (0) seconds.

3. Full-time/part time is defined as twelve (12) hours, zero (0) minutes, one (1) second through seventeen (17) hours, zero (0) minutes, zero (0) seconds of care.

4. Full time/full time is defined as seventeen (17) hours, zero (0) minutes, one (1) second through twenty-four (24) hours, zero (0) minutes, zero (0) seconds of care.

5. Counties may set rates for alternative care as defined by the county and reported in the county plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families.

D. Counties must not set qualified exempt child care provider rates such that they inhibit or deter providers from becoming licensed.

E. Absences and Holidays.

1. Effective August 1, 2021, until June 30, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

   a. No fewer than six (6) absences per month if they are in levels one (1) or two (2) of the Department's quality rating and improvement system.

   b. No fewer than seven (7) absences per month if they are in levels three (3), four (4), or five (5) of the Department's quality rating and improvement system.

   c. No fewer than six (6) absences per month if they are a school age child care program that does not have a quality rating through the Department's quality rating and improvement system.

2. Effective July 1, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

   a. No fewer than three (3) absences per month if they are in levels one (1) or two (2) of the Department's quality rating and improvement system.

   b. No fewer than four (4) absences per month if they are in levels three (3), four (4), or five (5) of the Department's quality rating and improvement system.

   c. No fewer than three (3) absences per month if they are a school age child care program that does not have a quality rating through the Department's quality rating and improvement system.

3. Counties may pay licensed child care providers for holidays in accordance with the policy set by the county and approved by the Department.

4. Counties may adopt a policy allowing the use of hold slots ~~in order~~ to address payments for unattended authorized care that is in addition to absences, holidays, and school breaks to hold a child's space with a provider when the child is not in care.

F. Counties may adopt a policy to pay for drop in days in addition to regularly authorized care.

G. Bonus Payments

Counties shall not at any time use federal Child Care Development Block Grant Funds (CCDBG), or state General Funds, for the payment of bonuses to child care providers serving children in the CCCAP program. A county shall not use CCDBG or state General Funds to retroactively increase the daily rate paid to child care providers and issue a payment to child care providers based on that retroactive calculation.

H. Child care providers who contend that the county has not made payment for care provided under CCCAP in compliance with these rules may request an informal conference with staff, the appropriate supervisor, the county director or the director's designee, and, if requested by the child care provider(s), state program staff. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision within fifteen (15) business days of the conference. The purpose of the conference shall be limited to discussion of the payments in dispute and the relevant rules regarding payment.

3.131~~15.2~~ SLOT CONTRACTS (COUNTY OPTION)

Slot contracts are used as a method to increase the supply and improve the quality of child care for county ~~-~~identified target populations and areas through collaborative partnerships that meet family and community needs. Slot contracts should also support continuity of care for households, funding stability for licensed child care providers, and expenditure predictability for counties.

A. Counties may choose to enter into a slot contract with a licensed child care provider not to exceed twelve (12) months or the length of the fiscal agreement in place (if it expires in less than twelve (12) months) ~~per contract with a licensed child care provider~~ to purchase a specified number of slots for children enrolled in CCCAP.

B. When a county chooses the option to use slot contracts with a licensed child care provider, the following steps must be completed a minimum of sixty (60) days prior to the commencement of the slot contract:

1. The county must submit a new county plan in CHATS and include selection of the slot contract option.

2. At the time the county plan is submitted, a slot contract policy based on the ~~state~~ Department ~~-~~developed policy template must be submitted to the ~~state d~~Department for approval. The policy must include but not limited to the following:

a. The county identified target populations and areas.

b. How the county will determine the length of the slot contract.

c. How the county will identify the need for the slot contract at a specific licensed child care provider.

d. How the county will ensure a fair and equitable review and selection process when selecting a licensed child care provider in the case of multiple child care programs expressing interest in entering into slot contracts. This must include an overview of the evaluation process used to identify licensed child care providers that are aligned with the county-determined criteria.

e. How the county will determine the number of slots they contract for with a licensed child care provider.

f. How the county will collaborate with the licensed child care provider to identify children to fill the vacant slots

g. How the county will continuously monitor the success of a slot contract during the contract period to include but not limited to:

1) What the measure of success is for the slot contract and how it is determined.

2) Frequency of monitoring the success of the slot contract, which must be at least twice per year but no more often than quarterly.

3) Cumulative attendance expectations and the ~~time~~ period over which attendance expectations must be defined. Cumulative attendance expectations must not be set higher than the following:

a) Seventy five percent (75%) for infants;

b) Eighty percent (80%) for toddlers; and~~,~~

c) Eighty five percent (85%) for preschoolers.

d) The ~~period of~~ time over which cumulative attendance must be met must be no less than quarterly and no more than six (6) months.

e) A plan for how the county will coordinate with the licensed child care provider to take intermediate steps or interventions if progress monitoring shows that attendance or other expectations are not being met.

f) Contract renegotiation for not reaching the set measure of success for the slot contract including under-utilization of paid slots during the designated monitoring period.

h. How the county will determine the need for a slot contract renewal.

C. Licensed child care providers that are fiscally managed by a county may not enter into a slot contract with the county that fiscally manages them.

D. Counties must submit the state developed monitoring tool in accordance with the county's monitoring schedule as specified in the county policy, within thirty-one (31) days of the end of the monitoring period.

E. Target population and areas may include but are not limited to:

1. Infants and toddlers;

2. Children with additional care needs;

3. Children needing care during nontraditional hours (i.e., evening, overnight and weekend care);

4. Children in underserved areas due to inadequate child care services and/or resources;

5. Areas where quality rated programs are in short supply for children enrolled in CCCAP; or~~,~~

6. Any other county~~-~~-identified target population or areas.

F. Criteria for assessing the need for slot contracts may include but is not limited to:

1. Counties must demonstrate the rationale for identifying specific CCCAP populations or underserved areas in their county;

2. The demographic data source(s) for all CCCAP households ~~must be identified which~~that supports the need to expand quality programs for specific CCCAP target populations and/or justifies needs based on underserved areas ~~for all CCCAP households~~ (demographic data may be based on zip codes or other geographic areas as determined by the county) must be identified;

3. Counties are strongly encouraged to work with Early Childhood Councils, resource and referral agencies, and other community-based organizations to identify the need for contracts with specific populations or in specific areas of the county.

G. Licensed child care programs who enter into slot contract agreements with counties must agree to be engaged in quality building at a minimum of a level two (2) quality rating through the Department's quality rating and improvement ~~S~~system~~Colorado Shines QRIS program~~.

H. The ~~state d~~Department will maintain a slot contract template that meets the requirements of this rule and all state and federal contracting requirements.

1. Counties must utilize the state-developed slot contract template in CHATS which must include any county-specific target populations and areas.

2. The ~~state d~~Department will assess and approve within thirty (30) days of receipt:

a. The updated county plan; and~~,~~

b. The county submitted slot contract policy.

3. The ~~state d~~Department will review the monitoring conducted by the county based on the county monitoring schedule.

3.1321~~5.3~~ ARRANGEMENT FOR CHILD CARE SERVICES

A. Counties shall use the ~~state~~ Department-prescribed child care authorization notice form to purchase care on a child-by-child basis and identify the amount of care and length of authorized care. Payment for care will be authorized for child care providers who have a license or who are qualified exempt child care providers and have a current, signed ~~state~~ Department-prescribed fiscal agreement form(s) with the county.

B. Child ~~C~~care is typically authorized for twelve (12) consecutive months except:

1. When an eligible child is or will be enrolled in a program that does not intend to operate for the entire eligibility period;

2. When an eligible child's adult caretaker(s) or teen parent(s) does not intend to keep the child enrolled with their initial child care provider(s) during the entire eligibility period; or,

3. When the adult caretaker(s) or teen parent(s) are participating in time limited activities such as job search or education/training.

C. When payment will be made to the child care provider(s), the county shall forward the child care authorization notice form to the child care provider(s) within seven (7) working days of determined eligibility. This time limit applies to original, changed, and terminated actions. The ~~state~~ Department may not reimburse counties if the seven (7) working day requirement is not met.

D. Child care will be paid for children from birth to thirteen (13) years for a portion of a day, but less than twenty-four (24) hours. Child care for eligible activities will include reasonable transportation time from the child care location to eligible activity and from eligible activity to child care location.

E. Children over the age of thirteen (13) but up to age nineteen (19), who are physically or mentally incapable of caring for ~~himself or herself~~themselves or who are under court supervision, may be eligible for child care due to having additional care needs for a portion of a day but less than twenty-four (24) hours. Counties may pay more for children who have additional care needs based upon verified individual child needs and if documented in county policy, but rates cannot exceed the child care provider's published private pay rates.

F. Counties may pay for activity fees if the child care provider charges such fees, and if the fiscal agreement contains the child care provider's policy on activity fee costs. Counties shall set their own limit on activity fees in accordance with the County Rate Plan in CHATS, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families, and county policy ~~that is set by the county and~~ that is approved by the ~~State~~ Department.

G. Counties may pay for transportation costs if the child care provider charges such costs, and if the fiscal agreement contains the child care provider's policy on transportation costs. Allowable costs include the child care provider's charges for transportation from the child care provider's facility to another child care or school facility. Transportation costs do not include travel between an adult caretaker's or teen parent's home and the child care provider's facility. Counties shall set their own limit on transportation fees in accordance with the County Rate Plan in CHATS, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families and county policy that is ~~set by the county and~~ approved by the ~~State~~ Department.

H. Counties may pay for registration fees if the child care provider is licensed, and if the fiscal agreement contains the child care provider's policy on registration costs. Counties shall set their own limit on registration fees in accordance with the County Rate Plan in CHATS, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families and county policy that is ~~set by the county and~~ approved by the ~~State~~ Department.

I. Any money paid or payable to child care providers shall be subject to execution, levy, attachment, garnishment, or other legal process.

~~J. All Eexpenditures shall must be necessary and reasonable for proper and efficient performance and administration. A cost is reasonable if, in its nature and amount, it meets all the following criteria:~~

~~1. Expenditures shall must be compared to market prices for reasonableness.~~

2. ~~Expenditures shall~~ must ~~be compared to the market prices for comparable goods or services as a test for reasonableness.~~

3. ~~Expenditures shall~~ must ~~be ordinary and necessary.~~

4. ~~Expenditures shall~~ must ~~be of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award.~~

5. ~~Expenditures shall~~ must ~~meet standards such as sound business practices and arms-length bargaining.~~

6. ~~Expenditures shall~~ must ~~have restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the State and/or Federal award. "Arms-length bargaining" means both parties to a contract have relatively equal powers of negotiation upon entering the contract. Neither party has a disproportionate amount of power to strong-arm the other party. Less-than-arms-length transactions are prohibited and these include, but are not limited to, those where; one party is able to control or substantially influence the actions of the other.~~

7. ~~Expenditures shall~~ must ~~be the same as would be incurred by a prudent person.~~

8. ~~Expenditures shall~~ must ~~not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. For this subsection, A~~a ~~prudent person is one who considers their responsibilities to the governmental unit, its employees, the public at large, and the federal government.~~

3.133~~15.4~~ ATTENDANCE TRACKING SYSTEM (ATS)

A. The adult caretaker(s) or teen parent(s) shall utilize the ~~Attendance Tracking System~~ATS as follows:

1. To record child's authorized and utilized daily attendance at the designated child care provider's location.

2. In the event that the child care provider has recorded a missed check-in or check-out, the adult caretaker or teen parent shall confirm the record in the ~~Attendance Tracking System~~ATS for the prior nine (9) day period.

3. Adult caretakers or teen parents shall not leave ~~his/her~~their individual attendance credentials in the child care provider's possession at any time or ~~he/she~~the child care provider may be subject to disqualification.

4. Non-cooperation with the use of the ~~Attendance Tracking System~~ATS may result in case closure and/or non-payment of the child care ~~subsidy~~ benefits as defined by a ~~state~~ Department approved county policy.

B. The child care provider will receive registration information for the ~~Attendance Tracking System~~ATS upon entering into a fiscal agreement with the county and shall utilize the ~~Attendance Tracking System~~ATS as follows:

1. To ensure that CCCAP adult caretakers or teen parents record child's authorized and utilized daily attendance at the designated child care provider's location.

2. ~~To ensure that in the event that~~If ~~the~~ adult caretaker(s) or teen parent(s) miss~~es~~ one or more check-ins/outs to record daily attendance, the child care provider may record the missed check-in/out in the ~~Attendance Tracking System~~ATS. If the child care provider records the missed check-in/out in ATS, ~~and~~ the adult caretaker or teen parent ~~shall~~ must confirm the record in the ~~attendance tracking system~~ATS for the prior nine (9) day period for automatic payment.

3. The child care provider shall not hold, transfer, or use any adult caretaker or teen parents' Individual attendance credentials at any time, or the child care provider may be subject to disqualification.

4. ~~Non-cooperation with the use of~~Failure to use the ~~Attendance Tracking System~~ATS may result in nonpayment of the child care ~~subsidy~~ benefit as defined by a ~~state~~ Department approved county policy, unless non-use of the ~~Attendance Tracking System~~ATS is approved by the ~~state d~~Department.

3.13~~415.5~~ COUNTY FISCAL AGREEMENT AUTHORITY

A. Counties have the authority to enter into a fiscal agreement with Qualified Exempt Child Care Providers and licensed child care providers, including those providers in a probationary status.

B. Counties have the authority to refuse to enter into a fiscal agreement with a child care provider.

C. Counties have the authority to terminate a fiscal agreement after providing at least fifteen (15) calendar-days' notice by postal service mail, fax, hand-delivery, or email or other electronic systems.

D. The counties have the authority to terminate a fiscal agreement without advance notice if a child's health or safety is endangered or if the child care provider is under a negative licensing action as defined in rule sections ~~2.104(R)~~7.701.2, ~~J 11~~ and ~~section~~ 7.701.~~2233., K~~ F (12 CCR 2509-8, incorporated by reference in rule section 3.103(X), above). Counties may not enter into or continue a fiscal agreement with any child care provider whose license has ~~a~~ been denied, suspended, or revoked ~~child care license~~through negative licensing action.

E. Counties may notify a child care provider of an immediate termination verbally, but written notice of that action must also be forwarded to the child care provider within one (1) business day. Any notice regarding denial or termination of a ~~F~~fiscal ~~A~~agreement shall include information regarding the child care provider's right to an informal conference.

~~3.116~~ PROGRAM INTEGRITY

3.13~~516.1~~ INTENTIONAL PROGRAM VIOLATION (IPV)

~~All adult caretakers or teen parents that apply for CCCAP shall must be provided with a written notice of the penalties for an Intentional Program Violation (IPV) on the child care application and statement of responsibility.~~

~~A. An IPV is an intentional act committed by an adult caretaker(s) or teen parent(s), for the purpose of establishing or maintaining the CCCAP household's eligibility to receive benefits for which they were not eligible. An adult caretaker or teen parent commits an IPV when he or she makes a false or misleading statement or omission in any application or communication, with knowledge of its false or misleading nature, for the purpose of establishing or maintaining the household's eligibility to receive benefits.~~

AB. A county shall ~~be required to~~ conduct an investigation of any adult caretaker(s) or teen parent(s) who has applied for or received CCCAP whenever there is an allegation or reason to believe that an individual has committed an IPV as described below.

1. Following investigation, action ~~shall~~ must be taken on cases where documented evidence exists to show an individual has committed one or more acts of IPV. Action ~~shall~~ must be taken through:

a. Obtaining a "Waiver of Intentional Program Violation Hearing~~,~~"~~; or,~~

b. Conducting an administrative disqualification hearing; or~~,~~

c. Referring the case for civil or criminal action in an appropriate court of jurisdiction.

2. Overpayment collection activities ~~shall~~ must be initiated immediately in all cases even if administrative disqualification procedures or referral for prosecution is not initiated.

3.13616.2 CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION (IPV)

A. The determination of IPV ~~shall~~ must be based on clear and convincing evidence that demonstrates intent to commit IPV. "Intent" is ~~defined as~~ a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.

B. "Clear and convincing" ~~evidence~~ is proof that is stronger than "a preponderance of evidence" and is unmistakable ~~and~~ or free from serious or substantial doubt.

3.13716.3 INTENTIONAL PROGRAM VIOLATION/ADMINISTRATIVE DISQUALIFICATION HEARINGS (IPV/ADH)

An IPV/ADH shall be requested whenever facts of the case do not warrant civil or criminal prosecution, where documentary evidence exists to show an individual has committed one or more acts of IPV, and the individual has failed to sign and return the Waiver of IPV form.

A. A county may conduct an IPV/ADH or may use the Colorado Department of Personnel and Administration's Office of Administrative Courts (OAC) to conduct the IPV/ADH. A ~~state~~ Department-prescribed form to request the administrative disqualification hearing for ~~intentional program violation~~IPV ~~shall~~ must be used for this purpose.

The ~~adult caretaker(s) or teen parent(s)~~accused individual may request that the ~~Department of Personnel and Administration~~OAC conduct the ADH/IPV in lieu of a county level hearing. Such a ~~hearing~~ request ~~shall~~ must be ~~requested~~ submitted at least ten (10) calendar-days before the scheduled date of the county hearing.

B. Notice of the date of the administrative disqualification hearing must be on ~~a~~ the form prescribed by the Department. The notice form ~~shall~~ must be mailed at least thirty (30) calendar-days prior to the hearing date to the last known address on record ~~to~~ for the individual alleged to have committed an IPV ~~at least thirty (30) calendar-days prior to the hearing date~~. The notice form ~~shall~~ must include a statement that the accused individual may waive the right to appear at the administrative disqualification hearing~~,~~ and attach the ~~along with the~~ hearing procedure form and statement of client rights.

C. The Administrative Law Judge (ALJ) or county hearing officer shall not enter a default against the ~~participant or applicant~~individual accused of having committed an IPV for failure to file a written

answer to the notice of IPV hearing form, but shall base the initial decision upon the evidence introduced at the hearing.

D. At the accused individual's request and ~~U~~upon good cause shown, the administrative hearing shall be rescheduled not more than once ~~at the accused individual's request~~. The request for continuance ~~shall~~ must be received by the ~~appropriate~~ county hearing officer or ALJ prior to the administrative disqualification hearing. The hearing shall not be continued for more than a total of thirty (30) calendar-days from the original hearing date. One additional continuance is permitted at the hearing officer or ALJ's discretion.

E. An IPV/ADH ~~shall~~ must not be requested against an accused ~~adult caretaker(s) or teen parent(s)~~individual whose case is currently being referred for prosecution on a civil or criminal action in an appropriate state or federal court.

3.138~~16.4~~ WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING

A. Supporting evidence warranting the scheduling of an administrative disqualification hearing for an alleged IPV ~~shall~~ must be documented with a county supervisory review. If the county determines there is evidence to substantiate that ~~person~~ an individual has committed an IPV, the county shall allow that ~~person~~ individual the opportunity to waive the right to an administrative disqualification hearing.

B. A ~~State~~Department-approved Notice of Alleged Intentional Program Violation form including the client's rights, the ~~state~~Department-approved Waiver of Intentional Program Violation Hearing form, and the ~~state~~ Department approved request for a state level Administrative Disqualification Hearing for Intentional Program Violation form ~~shall~~ must be mailed to the individual suspected of an IPV. An investigator in the process of completing an investigation ~~shall~~ must offer the waiver to the individual if the investigator is not intending to pursue criminal or civil action. The individual ~~shall~~ must have fifteen (15) calendar-days from the date these forms are mailed by the county to return the completed Waiver of IPV hearing form.

C. When ~~an adult caretaker(s) or teen parent(s)~~the accused individual waives ~~his/her~~their right to an administrative disqualification hearing, a written notice of the disqualification penalty ~~shall~~ must be mailed to the individual. This notice shall be on the ~~State~~ Department-prescribed notice form.

D. The completion of the waiver is voluntary. ~~and t~~The county ~~may~~ must not require an individual to complete it ~~its completion nor~~or by its actions appear to require the individual to ~~the completion~~ complete ~~of~~ the ~~request of~~ waiver.

3.139~~16.5~~ DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION (IPV)

A. If the ~~adult caretaker(s) or teen parent(s)~~accused individual signs and returns the request for waiver of IPV hearing form within the fifteen (15) day deadline or ~~an~~ the individual is found to have committed an ~~intentional program violation~~IPV through the hearing process, the ~~primary adult caretaker or teen parent~~individual shall be provided with a notice of the period of disqualification for CCCAP benefits. The disqualification shall begin the first day of the month following the disqualification determination, allowing for authorization noticing, unless the household in which a disqualified person is living is ineligible for other reasons.

B. Once the disqualification has been imposed, the period shall run without interruption even if the participant becomes ineligible for CCCAP.

C. The penalty shall be in effect for:

1. Twelve (12) months upon the first occasion of any such offense;

2. Twenty-four (24) months upon the second occasion of any such offense; and~~,~~

3. Permanently upon the third such offense.

D. The disqualification penalties affect any household to which the adult caretaker(s) or teen parent(s) is a member.

E. The penalty period shall remain in effect unless and until the finding is reversed by the ~~State~~ Department or a court of appropriate jurisdiction.

F. A penalty imposed by one county shall be used when determining the appropriate level of disqualification and penalty for that individual in another county.

G. The disqualification penalties may be in addition to any other penalties which may be imposed by a court of law for the same offenses.

3.14~~016.6~~ NOTIFICATION OF HEARING DECISION

A. If the ~~local level~~county hearing officer finds the ~~adult caretaker(s) or teen parent(s)~~accused individual has committed an IPV as a result of a county hearing, a written notice shall be provided to notify the primary adult caretaker or teen parent of the decision. The local level hearing decision notice shall be a ~~state~~ Department-prescribed form, which includes a statement that a state level hearing may be requested with the request form attached.

B. In a hearing before an Administrative Law Judge (ALJ), the determination of IPV shall be an initial decision, which shall not be implemented while pending ~~State~~ Department review and ~~F~~final a~~A~~gency ~~A~~action. Pursuant to section 24-4-105(14)(c), C.R.S., ~~T~~the initial decision shall advise the adult caretaker(s) or teen parent(s) that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency ~~decision~~ action affirming those provisions.

C. When a final ~~decision~~ agency action is made, a written notice of the disqualification penalty shall be mailed to the adult caretaker(s) or teen parent(s). This notice shall be on a ~~state~~ Department-prescribed notice form.

3.14~~116.7~~ REFERRAL TO DISTRICT ATTORNEY

When the counties or their designee(s) determine that they have paid or are about to pay for child care as a result of a suspected criminal act, the facts used in the determination shall be reviewed with the counties' legal advisor, investigatory unit and/or a representative from the District Attorney's office. If the available evidence supports suspected criminal acts, the case shall be referred to the District Attorney. All referrals to the District Attorney shall be made in writing and shall include the amount of assistance fraudulently received by the adult caretaker, teen parent, or child care provider.

The following actions may be taken:

A. If the District Attorney prosecutes, the amount of overpayment due will be taken into consideration and may be included in the court decision and order.

B. Interest may be charged from the month in which the amount of overpayment due was received by the collection entity until the date it is recovered. Interest shall be calculated at the legal rate.

C. If the District Attorney decides not to prosecute, the amount of overpayment due will continue to be recovered by all legal means. The county retains the option to pursue IPV/ADH or other administrative measures.

D. A county referral for prosecution is not a violation of the safeguards and restrictions provided by confidentiality rules and regulations.

3.142~~16.8~~ CRIMINAL VERDICT DISQUALIFICATION

Upon determination of fraudulent acts, adult caretaker(s) or teen parent(s) who have signed the application or re-determination will be disqualified from participation in CCCAP for the following periods, pursuant to sections 26-1-127(1) and 26.5-4-116(1), C.R.S. Such disqualification is mandatory and in addition to any other penalty imposed by law. Disqualification levels are:

A. Twelve months (12) for the first offense; ~~or,~~

B. Twenty-four months (24) for a second offense; or~~,~~

C. Permanently for a third offense.

~~**3.143316.9 DISQUALIFICATION PERIOD**~~

~~**A. Upon determination of fraudulent criminal acts, the adult caretaker(s) or teen parent(s) shall be notified of the period of disqualification. The disqualification shall begin the first day of the month that follows the disqualification determination, allowing for authorization noticing and shall run uninterrupted from that date.**~~

~~**B. In collecting evidence of fraudulent activities the counties or their designee shall not violate the legal rights of the individual. When the county questions whether an action it contemplates might violate the legal rights of the individual, it shall seek the advice of its legal advisor.**~~

3.143~~16.91~~ DISQUALIFICATION PENALTIES

A. In addition to any criminal penalty imposed, the disqualification penalties affect the adult caretaker(s) or teen parent(s) the penalty period shall remain in effect unless the finding is reversed by the ~~state d~~Department or a court of appropriate jurisdiction. The disqualification period shall follow the adult caretaker(s) and teen parent(s) regardless of the county of residence in Colorado. Penalties imposed are progressive regardless of the county of residence for each subsequent penalty level.

B. Child care providers shall be subject to the fiscal agreement termination process outlined in rule section 3.132~~15.3~~.

3.144~~16.92~~ HEARING AND DISPUTE RESOLUTION RIGHTS

A. Adult caretaker(s) or teen parent(s) have the right to a county dispute resolution conference or state level fair hearing pursuant to Colorado Department of Human Services rule sections 3.840 and 3.850 of Income Maintenance Volume 3, incorporated by reference in rule section 3.109.

B. Child care providers shall be informed of their right to a county dispute resolution conference on the reverse side of their copy of the child care authorization notice pursuant to Colorado Department of Human Services rule section 3.840, "C~~c~~ounty D~~d~~ispute R~~r~~esolution ~~p~~Process.~~"~~

3.145~~16.93~~ CHILD CARE RECOVERY

When the counties or their designee have determined that an adult caretaker(s) or teen parent(s) has received public assistance for which he or she was not eligible due to an increase in household income~~,~~ that causes the household's income exceeds eighty-five percent (85%) of the State median income~~;~~ or a

change in the qualifying eligible activity that was not reported within four (4) weeks of its occurrence; or a child care provider has received child care payments they were not eligible for:

A. The county, or its designee(s), must determines if the overpayment is to be recovered. Exception from recovery includes:

1. The household ~~who~~ is without fault in the creation of the overpayment; and,

2. The household ~~who~~ has reported any increase in income or change in resources or other circumstances affecting the household's eligibility within the timely reporting requirements for the program.

B. The county or its designee must determines whether there was willful misrepresentation and/or withholding of information and considers or rules out possible fraud;

C. The county or its designee must determines the amount of overpayment;

D. The county or its designee must ~~notifies~~ notify the household or child care provider(s) of the amount due and the reason for the recovery using the ~~prior~~ timely written notice rules; and

E. The county or its designee must enters the amount of the overpayment and other specific factors of the situation in the case record, including the calculation used to determine the recovery amount.

3.14~~616.94~~ TIMELINESS AND AMOUNT

A. A recovery for overpayment of public assistance is established when the overpayment occurred during the twelve (12) months preceding discovery and the facts to establish recovery have been received. However, when a single overpayment or several overpayments have been made within the prior twelve (12) months and the overpayments total less than fifty dollars ($50), a recovery for repayment is not made.

B. If an overpayment occurs due to willful misrepresentation or withholding of information and the county is unable to determine income and activity eligibility criteria for child care previously provided, either through verification from the ~~client~~ household or child care provider(s) or access to other verification sources, the county shall recover the entire benefit for the affected months.

1. For willful misrepresentation and/or withholding of information, all overpayments will be pursued regardless of how long ago they occurred.

3.14~~716.95~~ RECOVERY PROCESS

A. When ~~it is~~is the county ~~determined~~ determines that an overpayment has occurred, the counties or their designee shall:

1. Document the facts and situation that produced the overpayment and retain this documentation until the overpayment is paid in full or for three (3) years plus the current year, whichever is longer.

2. Determine what benefits the household was eligible for and recover benefits for which the household was found to be ineligible, except in the case of willful misrepresentation or withholding of information.

3. Determine the payments for which the child care provider was not eligible and recover those payments.

4. Initiate timely written notice allowing for the fifteen (15) calendar day noticing period. Such notice shall include a complete explanation, including applicable rules, concerning the overpayment, recovery sought and appeal rights.

5. Take action to recover following the right of appeal and fair hearing process.

6. Pursue all legal remedies available to the county in order to recover the overpayment. Legal remedies include, but are not limited to:

   a. Judgments;

   b. Garnishments;

   c. Claims on estates; and~~,~~

   d. The state income tax refund intercepts process.

7. In accordance with sections 26.5-4-119~~26-2-133~~ and 39-21-108, C.R.S., the state and counties or their designees may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's State Income Tax Refund.

   a. This method may be used to recover overpayments that have been:

      1) Determined by final agency action;~~ or,~~

      2) Ordered by a court as restitution; or~~,~~

      3) Reduced to judgment.

   b. This offset (intercept) may include the current legal rate of interest on the total when fraud or intentional program violation has been determined. Offsets (intercepts) are applied to recoveries through use of a hierarchy. The hierarchy is:

      1) Fraud recoveries, oldest to newest;

      2) Court ordered recoveries, oldest to newest; and~~,~~

      3) Client error recoveries, oldest to newest.

B. Prior to certifying the taxpayer's name and other information to the Colorado Department of Revenue, the Department shall notify the taxpayer, in writing at ~~his/her~~their last-known address, that the ~~state~~ Department intends to use the tax refund offset (intercept) to recover the overpayment. In addition to the requirements of section 26.5-4-119(2)~~26-2-133(2)~~, C.R.S., the pre-offset (intercept) notice shall include the name of the counties claiming the overpayment, a reference to child care as the source of the overpayment, and the current balance owed. The taxpayer is entitled to object to the offset (intercept) by filing a request for a county dispute resolution conference or state hearing within thirty (30) calendar-days from the date that the pre-offset notice is mailed, faxed, emailed, sent via other electronic systems, or hand-delivered to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those stated elsewhere in Colorado Department of Human Services rule sections 3.840 and ~~section~~ 3.850, and incorporated by reference in rule section 3.109, above. At the hearing on the offset (intercept), the counties or their designee, or an Administrative Law Judge (ALJ), shall not consider whether an overpayment has occurred, but may consider the following issues if raised by the taxpayer in ~~his/her~~their request for a hearing. ~~w~~Whether:

1. The taxpayer was properly notified of the overpayment;

2. The taxpayer is the person who owes the overpayment;

3. The amount of the overpayment has been paid or is incorrect; or

4. The debt created by the overpayment has been discharged through bankruptcy.

Editor's Notes

History

New rule emer. rule eff. 10/01/2022.

Entire rule eff. 01/14/2023. Rules in 8 CCR 1403-1 were re-adopted from 9 CCR 2503-9.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Danielle Greer/Jesse Burne	Email(s): danielle.greer@state.co.us, jesse.burne@state.co.us
Program/Division: Colorado Child Care Assistance Program/Division of Early Learning Access & Quality	CDEC Tracking No.: 2023-06-014-E
CCR Number(s): 8 CCR 1403-1	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Compliance with Federal and/or State laws, mandates, or guidelines If there are "Multiple/Other" reasons, please explain:
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	Annually, the Department updates the Federal Poverty Levels and the State Median Income levels in Rule and in CHATS, the automated system used by counties to administer Colorado Child Care Assistance Program (CCCAP), to align with each federal fiscal year updates. These guidelines are used to determine eligibility for families applying to the CCCAP program. These updated figures must be in rule in accordance with the Administrative Procedure Act, section 24-4-103, C.R.S., which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance). Lastly, technical changes have been made to this proposed rule to ensure compliance with statute, correct statutory references, and the consistent use of "Department" to provide clarity for readers of the rules.
Statutory Authority: (Include Federal Authority, if applicable)	45 CFR 98.16 (h), (k): Lead Agencies must establish income eligibility thresholds that do not exceed 85% of the State Median Income but that allows for gradual increases in income, and describe the sliding fee scale for cost-sharing by families. 26.5-1-105(1): The Executive Director is authorized to promulgate rules for the administration of the Department and for all programs and services specified in Title 26.5, which includes the Child Care Assistance Program outlined in part 1 of Article 4 of Title 26.5. 26.5-4-111(1), C.R.S. (2022): Pursuant to Department rules, counties shall provide child care assistance to a participant or any person or family whose income is not more than one hundred eighty-five percent of the federal poverty level pursuant to Department rules. The Executive Director by rule may adjust the percentage of the federal poverty level used to determine child care assistance eligibility by promulgating a rule and shall revise income and verification requirements that promote alignment and simplification.

Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:
Effective Date(s) of proposed rule or amendment(s): (**E**mergency/**P**ermanent)	☑ Mandatory ☐ Discretionary (E) Effective Date: 10/1/2023 (P) Effective Date: 12/30/2023 (E) Termination Date: 1/27/2024
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☑ Yes ☐ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☑ Yes ☐ No If Yes, explain why: Old Colorado Child Care Assistance Program rules are still available through the Secretary of State under CDHS Volume 3. Current and effective CCCAP rules are now available under CDEC 8 CCR 1403-1.
Does the proposed rule or amendment(s) include	☑ Yes ☐ No

material that is incorporated by reference[1]?	If Yes, provide source: There are several definitions and rules that incorporate Colorado Department of Human Services regulations, Colorado Revised Statutes, or federal materials for additional information and clarity.
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	☐ Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services. ☐ Decrease duplication and conflicts with implementing programs and providing services. ☑ Increase equity in access and outcomes to programs and services for children and families. ☐ Increase administrative efficiencies among programs and services provided by the department. ☐ Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Emergency and Permanent Tier II
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: Counties will be made aware of the proposed rules during monthly, statewide meetings that are held by CCCAP between July 27, 2023, and October 26, 2023, after the rules go into effect. Counties will be formally notified of the rule via Operation Memo. Because we are mandated to make these revisions, the Department will not be requesting stakeholder feedback. Monthly Meeting Presentation Folder: https://drive.google.com/drive/folders/1t6ZfavsMF0G5tu1BLWMx0lwpuQjO2rh4?usp=sharing The Public Folder for the proposed draft rules and written comments.

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Assistant Attorney General Review:	7/14/2023 - 8/30/2023
RAC County Subcommittee Review Date (if required):	9/7/2023
Rules Advisory Council (RAC) Review Date:	9/14/2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	Emergency: 9/29/2023 Permanent: 10/27/2023

Regulatory and Cost Benefit Analysis

1. **Community Impact:** Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

   Counties that administer Colorado Child Care Assistance Program (CCCAP) will benefit from the rule, ensuring that eligibility is correctly determined across the state. Households receiving CCCAP will have their eligibility correctly determined under the new income amounts.

2. **Quality and Quantity:** Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).

   If income levels are not updated, the Department will not be in compliance with federal requirements. Additionally, families applying for services will not be determined eligible under the correct income guidelines if the income levels are not put into effect by October 1, 2023. Non-compliance could result in a loss of CCDF funds and would result in families being incorrectly denied for services.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

   Making these required revisions ensures that families are correctly determined income eligible for CCCAP. Because the income figures have increased since October 2022, more families may be eligible for services based on these revisions.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate “not applicable.”

Department	No fiscal impact to the Department as the changes in CHATS are covered under standard operations.
Local Governments/ Counties	Counties may see a fiscal impact if we do *not* promulgate this rule package immediately as families that have lost benefits may be able to appeal their denial under the new income guidelines that the Department is required to implement.
Providers	The Federal Poverty Guideline and State Median Income figures do not apply to Child Care Providers for the purposes of CCCAP. Therefore, there is no direct impact on Child Care Providers.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	The Federal Poverty Guideline and State Median Income figures do not apply to Community Partners. Therefore, there is no direct impact on this stakeholder group.
Other State Agencies	The changes to Federal Poverty Guideline and State Median Income figures do not impact other State Agencies.
Tribal Communities	Tribes have separate Child Care Development Fund (CCDF) requirements outlined in 45 CFR. As a result, there is no impact on Tribal Communities.

5. **Evaluation:** How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

Counties utilize the Child Care Automated Tracking System (CHATS) to determine eligibility for the Colorado Child Care Assistance Program (CCCAP). The revised figures are updated in CHATS and the new Federal Poverty Guidelines (FPG) and State Median Income (SMI) figures are automatically applied upon eligibility determination in the system. Compliance with the use of CHATS is monitored through the CCCAP County Monitoring Process, Quality Assurance Process, and other audits including those conducted by the Office of the State Auditor and the federal Office of Child Care, part of the U.S. Department of Health and Human Services.

6. **Comparative Analysis:** Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

There are no alternatives to this rulemaking because the APA requires that these standards be promulgated in the rule and the numbers in regulation must be consistent with the federal guidelines.

7. **Comparative Analysis:** Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

There are no alternatives to this rulemaking because the APA requires that these standards be promulgated in the rule and the numbers in regulation must be consistent with the federal guidelines.

Notice of Proposed Rulemaking

Tracking number

2023-00610

Department

1505 - Department of State

Agency

1505 - Secretary of State

CCR number

8 CCR 1505-6

Rule title

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Rulemaking Hearing

Date

10/17/2023

Time

01:00 PM

Location

Please see the Additional Information section for details.

Subjects and issues involved

The Colorado Department of State is considering amendments to the campaign and political finance rules to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance laws. Specifically, the Department is considering additional rule amendments to Rule 1.5 clarifying that a committee, in part, refers to a political party committee and Rule 10.17.1 updating the contribution limit that political parties must adhere to for contributions to candidates for Governor, Secretary of State, State Treasurer, Attorney General, State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, and District Attorney. The Department may consider additional rule amendments. Please see attached Notice of Permanent Rulemaking including a Draft Statement of Basis.

Statutory authority

Article XXVIII, Sections 3(13), 8, and 9(1)(b) of the Colorado Constitution and Sections 1-1-107(2)(a) and 1-45-111.5(1), C.R.S.

Contact information

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Preliminary Draft of Proposed Rules

Colorado Department of State
Rules Concerning Campaign and Political Finance
8 CCR 1505-6

September 15, 2023

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Department of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the October 17, 2023, rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **October 12, 2023**.[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
Italic blue font text	Annotations

Amendments to 8 CCR 1505-6 follow:

Amendment to Rule 1.5 to clarify that a committee refers to a political party committee, not the entire political party:

1.5 "Committee" as used generally in these rules includes candidate committee, political committee, small donor committee, issue committee, small-scale issue committee, independent expenditure committee, political party COMMITTEE, and political organization.

Amendments to Rule 10.17 concerning a grammatical error in section (a) and updating a numerical miscalculation from 2015 within section (i)'s table:

10.17 Current adjusted limits

10.17.1 Adjusted limits made in the first quarter of 2023 and effective until the next adjustment is made in 2027:

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[1] Sections 24-4-103(2.5) and (3)(a), C.R.S. (2022). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
[2] Section 24-4-103(4)(a), C.R.S. (2022). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

(a) There is no adjustment to the contribution limits on individual donations to small donor committees outlined in COLO. CONST. Article XXVIII, Section 2(14).

[No changes to sections (b) through (h).]

(i) This table contains the contribution limits listed in subsections (a)-(h).

Recipient:	Contributor:				
	Natural Person	Person, other than a natural person	Political committee	Small donor committee	Political party
Political committee	$725 per election cycle	$725 per election cycle	$725 per election cycle	$725 per election cycle	$725 per election cycle
Small donor committee	$50 per year	Prohibited	Prohibited	Prohibited	Prohibited
Governor (governor & lt. governor)	$725 per election cycle*	$725 per election cycle*	$725 per election cycle*	$7,825 per election cycle*	~~$789,025~~789,060 per election cycle
Secretary of state, state treasurer, attorney general	$725 per election cycle*	$725 per election cycle*	$725 per election cycle*	$7,825 per election cycle*	~~$157,750~~157,805 per election cycle
State senate	$225 per election cycle*	$225 per election cycle*	$225 per election cycle*	$3,100 per election cycle*	~~$28,375~~28,395 per election cycle
State house of representatives, state board of education, regent of the University of Colorado, district attorney	$225 per election cycle*	$225 per election cycle*	$225 per election cycle*	$3,100 per election cycle*	~~$20,475~~20,500 per election cycle
Political party	$4,675 ($3,875 at the state level) per year	$4,675 ($3,875 at the state level) per year	$4,675 ($3,875 at the state level) per year	$23,600 ($19,650 at the state level) per year	Transfers within a party may be made without limitation.
County candidate	$1,425 per election cycle*	$1,425 per election cycle*	$1,425 per election cycle*	$14,400 per election cycle*	$25,475 per election cycle
School district director	$2,500 per election cycle	$2,500 per election cycle	$2,500 per election cycle	$25,000 per election cycle	$2,500 per election cycle

* A candidate may accept the contribution limit for both the primary election and the general election.

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

Notice of Proposed Rulemaking

Colorado Department of State
Rules Concerning Campaign and Political Finance
8 CCR 1505-6

Date of notice: September 15, 2023
Date and time of public hearing: October 17, 2023, at 1:00 p.m.

I. Hearing Notice

As required by the State Administrative Procedure Act,[1] the Colorado Department of State gives notice of proposed rulemaking. The hearing is scheduled for October 17, 2023, at 1:00 p.m. in the Red Rocks Conference Room on the 5th floor of the Department of State's office at 1700 Broadway, Denver, CO 80290. **This meeting will be conducted in person and via webinar.** Details regarding how to join the webinar and testify online during the hearing are outlined in section VI of this notice.

II. Subject

The Department is considering amendments to the rules concerning campaign and political finance[2] to improve the administration and enforcement of Colorado campaign finance law.[3]

Specifically, the Department is considering additional rule amendments to Rule 1.5 clarifying that a committee, in part, refers to a political party committee and Rule 10.17 updating the contribution limit that political parties must adhere to for contributions to candidates for Governor, Secretary of State, State Treasurer, Attorney General, State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, and District Attorney.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory and constitutional authority

The Department proposes the rule revisions and amendments in accordance with the following statutory and constitutional provisions:

[1] Section 24-4-103(3)(a), C.R.S. (2022).
[2] 8 CCR 1505-CCR 6.
[3] Article 45 of Title 1, C.R.S. (2022).

- Article XXVIII, Section 3(13) of the Colorado Constitution, which requires the Secretary of State to "calculate . . . and specify [contribution] limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section."

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to "promulgate rules related to filing in accordance with article 4 of title 24, C.R.S."

- Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to "[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution]."

- Section 1-1-107(2)(a), C.R.S., (2022), which authorizes the Secretary of State "[t]o promulgate, publish and distribute…such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws."

- Section 1-45-111.5(1), C.R.S., (2022), which requires the Secretary of State to promulgate such rules "as may be necessary to enforce and administer any provision of" Article 45 of Title 1, C.R.S.

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Department of State's rules and notices of rulemaking website at:
https://www.coloradosos.gov/pubs/rule_making/hearings/2023/CPFRulesHearing20231017.html
.

You may also contact our office to request an editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,[4] if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by **October 12, 2023**.

V. Opportunity to testify and submit written comments

The Department values your feedback in our rulemaking process, and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comments concerning the rule amendments. You may submit written comments to SoS.Rulemaking@coloradosos.gov any time before and during the hearing. If you attend the hearing in person, you may submit written comments to the hearing panel as well. An additional opportunity to comment in writing will be

[4] Section 24-4-103(3)(a), C.R.S. (2022). "Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

announced at the conclusion of the hearing. Information regarding how to testify via webinar during the hearing is provided in section VI of this notice.

All written comments will be posted online on the Department of State's website: https://www.coloradosos.gov/pubs/rule_making/hearings/2023/CPFRulesHearing20231017.html .

We will redact apparent personal contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor. All written comments will be added to the official rulemaking record.

VI. Webinar and audio recording of hearing

Register to attend online
To join and listen to the hearing, you must register for the webinar: https://attendee.gotowebinar.com/register/1119092164225954396.

When you register, you must provide your full name and email address. Please provide additional contact information, including your address and telephone number. You may also provide your job title and organization. Lastly, indicate whether you plan to testify during the hearing. When you submit your registration, you should receive a confirmation email including details about how to join the webinar.

Hybrid hearing procedures
After the introduction and a brief summary of the rulemaking, we will open the hearing to testimony as follows:

- For the sake of efficiency, in-person attendees will be called upon first to provide their public comment. We will reference the sign-in sheet provided and individually call upon attendees who wish to provide their testimony. Once we have exhausted the in-person sign-in sheet, we will move forward with the testimony of online attendees.

- Referencing webinar registration records, we will identify and individually unmute online attendees who indicated their intent to testify during the hearing.

- Once we have exhausted that list, we will ask whether any additional attendees wish to testify. In-person attendees may raise their hands to indicate their intention to testify, and online attendees may raise/lower their hand by clicking the icon in their control panel.

- To ensure that the hearing is prompt and efficient, oral testimony may be time limited.

Before the hearing concludes, we will announce an additional opportunity to submit written comments and the associated deadline.

Webinar audio requirements
Please be advised: we strongly encourage attendees to join the webinar through their computer or the GoToWebinar app, even if they use their telephone to dial in for audio. To testify during the

hearing, you must use a computer or the GoToWebinar app to be unmuted and to utilize the "raise hand" feature within the webinar. If you access the webinar only by telephone, you may not appear in our webinar attendee list, meaning we will not be able to unmute you. Moreover, the raise your hand feature is only available to attendees who access the webinar by computer or by app. For the best audio, it is best to use your computer microphone and speakers or a headset or headphones, if you choose to testify. As outlined above, we will first receive online testimony from attendees whose registration indicates that they plan to provide testimony and then we will offer attendees the option to raise their hand.

Audio recording
After the hearing concludes, a recording will be available on our audio broadcasts page here: https://www.coloradosos.gov/pubs/info_center/audioBroadcasts.html.

Office contact

If you have any questions or would like to submit written comments, please contact the Rulemaking and Legislative Policy Analyst at SoS.Rulemaking@coloradosos.gov or (303) 894-2200 ext. 6124.

Dated this 15th of September 2023.

Christopher P. Beall
Colorado Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

STATE OF COLORADO
Department of State
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Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

Draft Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State
Rules Concerning Campaign and Political Finance
8 CCR 1505-6

September 15, 2023

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State rules concerning campaign and political finance.[1] The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law[2] as follows:

- Amendments to Rule 1.5 clarify that a committee, in part, refers to a political party committee.

- Amendments to Rule 10.17.1 update incorrect contributions limits from political parties to the following elected offices: Governor, Secretary of State, State Treasurer, Attorney General, State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, and District Attorney.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

II. Rulemaking Authority

The constitutional and statutory authority is as follows:

- Article XXVIII, Section 3(13) of the Colorado Constitution, which requires the Secretary of State to "calculate . . . and specify [contribution] limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section."

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to "promulgate rules related to filing in accordance with article 4 of title 24, C.R.S."

[1] 8 CCR 1505-6.
[2] Article 45 of Title 1, C.R.S. (2022).

- Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to "[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution]."

- Section 1-1-107(2)(a), C.R.S., (2022), which authorizes the Secretary of State "[t]o promulgate, publish and distribute…such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws."

- Section 1-45-111.5(1), C.R.S., (2022), which requires the Secretary of State to promulgate such rules "as may be necessary to enforce and administer any provision of" Article 45 of Title 1, C.R.S.

Preliminary Draft of Proposed Rules

Colorado Department of State
Rules Concerning Campaign and Political Finance
8 CCR 1505-6

September 15, 2023

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Department of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the October 17, 2023, rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **October 12, 2023**.[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
Italic blue font text	Annotations

Amendments to 8 CCR 1505-6 follow:

Amendment to Rule 1.5 to clarify that a committee refers to a political party committee, not the entire political party:

1.5 "Committee" as used generally in these rules includes candidate committee, political committee, small donor committee, issue committee, small-scale issue committee, independent expenditure committee, political party COMMITTEE, and political organization.

Amendments to Rule 10.17 concerning a grammatical error in section (a) and updating a numerical miscalculation from 2015 within section (i)'s table:

10.17 Current adjusted limits

10.17.1 Adjusted limits made in the first quarter of 2023 and effective until the next adjustment is made in 2027:

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[1] Sections 24-4-103(2.5) and (3)(a), C.R.S. (2022). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
[2] Section 24-4-103(4)(a), C.R.S. (2022). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

(a) There is no adjustment to the contribution limits on individual donations to small donor committees outlined in COLO. CONST. Article XXVIII, Section 2(14).

[No changes to sections (b) through (h).]

(i) This table contains the contribution limits listed in subsections (a)-(h).

Recipient:	Contributor:				
	Natural Person	Person, other than a natural person	Political committee	Small donor committee	Political party
Political committee	$725 per election cycle	$725 per election cycle	$725 per election cycle	$725 per election cycle	$725 per election cycle
Small donor committee	$50 per year	Prohibited	Prohibited	Prohibited	Prohibited
Governor (governor & lt. governor)	$725 per election cycle*	$725 per election cycle*	$725 per election cycle*	$7,825 per election cycle*	~~$789,025~~789,060 per election cycle
Secretary of state, state treasurer, attorney general	$725 per election cycle*	$725 per election cycle*	$725 per election cycle*	$7,825 per election cycle*	~~$157,750~~157,805 per election cycle
State senate	$225 per election cycle*	$225 per election cycle*	$225 per election cycle*	$3,100 per election cycle*	~~$28,375~~28,395 per election cycle
State house of representatives, state board of education, regent of the University of Colorado, district attorney	$225 per election cycle*	$225 per election cycle*	$225 per election cycle*	$3,100 per election cycle*	~~$20,475~~20,500 per election cycle
Political party	$4,675 ($3,875 at the state level) per year	$4,675 ($3,875 at the state level) per year	$4,675 ($3,875 at the state level) per year	$23,600 ($19,650 at the state level) per year	Transfers within a party may be made without limitation.
County candidate	$1,425 per election cycle*	$1,425 per election cycle*	$1,425 per election cycle*	$14,400 per election cycle*	$25,475 per election cycle
School district director	$2,500 per election cycle	$2,500 per election cycle	$2,500 per election cycle	$25,000 per election cycle	$2,500 per election cycle

* A candidate may accept the contribution limit for both the primary election and the general election.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Liquor and Tobacco Enforcement Division

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 COLORADO LIQUOR RULES 1 - eff 10/15/2023

Effective date

10/15/2023

DEPARTMENT OF REVENUE

Liquor and Tobacco Enforcement Division

COLORADO LIQUOR RULES

1 CCR 203-2

Regulation 47-004. Fermented Malt Beverages On or On/Off - Possession of Alcohol Liquors.

Basis and Purpose. The statutory authority for this regulation is located at subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-4-104(1)(c)(I)(A), and 44-4-107(1), C.R.S. The purpose of this regulation is to prohibit possession and consumption of vinous or spirituous liquors on a fermented malt beverage on or on/off licensee's licensed premises.

A. Except as provided by subsection 44-3-107(2), C.R.S., no Fermented Malt Beverage On or On/Off retailer licensed pursuant to article 4 of title 44, C.R.S., shall allow the sale, possession, or consumption of vinous or spirituous liquor on its licensed premises.

B. Except as provided in subsection 44-3-107(2), C.R.S., no person shall possess or consume vinous or spirituous liquor on the licensed premises of a Fermented Malt Beverage On or On/Off retailer licensed pursuant to article 4 of title 44, C.R.S.

C. Except as provided by subsection 44-3-107(2), C.R.S. no Fermented Malt Beverage and Wine Retailer licensed pursuant to article 4 of Title 44, C.R.S., shall allow the sale, possession, or consumption of spirituous liquor on its licensed premises.

D. Except as provided in subsection 44-3-107(2), C.R.S., no person shall possess or consume spirituous liquor on the licensed premises of a Fermented Malt Beverage and Wine Retailer licensed pursuant to article 4 of title 44, C.R.S.

Regulation 47-008. Fermented Malt Beverages - Limitations of License.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(RA), 44-4-107(1), 44-3-901(6)(k), and 44-3-911(6)(a)(I), C.R.S. The purpose of this regulation is to differentiate fermented malt beverage on-premises retailers, fermented malt beverage and wine retailers, and fermented malt beverage on- and off-premises retailers and clarify what activities are permitted under each license type.

A. Fermented Malt Beverage retailers licensed for on-premise consumption under 44-4-107(1)(b), C.R.S. shall not sell or permit the removal from the licensed premises of any fermented malt beverages in sealed containers unless:

   1. A special event is being conducted pursuant to subsection 44-3-107(2), C.R.S.; or

   2. A licensee is selling fermented malt beverages in sealed containers for take-out pursuant to 44-3-911(6)(a)(I), C.R.S.

B. Fermented Malt Beverage and Wine Retailers licensed for off-premises consumption under 44-4-107(1)(a)(1), C.R.S., shall not allow open containers of fermented malt beverage or wine on their licensed premises unless:

   1. A sampling for the fermented malt beverage and wine retailer is being provided pursuant to subsection 44-3-901(6)(k)(II)(B), C.R.S.;

2. A tasting is being conducted by the fermented malt beverage and wine retailer pursuant to 44-3-901(6)(k)(IV), C.R.S.; or

3. A damaged or defective product is present in order to be returned and is stored outside the sales area of the licensed premises until such time that the product can be returned to the wholesaler.

C. Fermented Malt Beverages retailers licensed for both on- and off-premises consumption under 44-7-107(1)(c)(I), C.R.S., when using the privileges for on-premises consumption shall not allow removal of fermented malt beverages from its licensed premises, unless:

1. The fermented malt beverage retailer licensed for both on- and off-premises consumption is providing the fermented malt beverage for take-out pursuant to section 44-3-911(6)(a)(I), C.R.S.

Regulation 47-009. Fermented Malt Beverage and Wine Retailer Licenses Distance Requirement.

Basis and Purpose. The statutory authority for this regulation is found at subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-202(2)(a)(I)(O), and 44-3-301(12), C.R.S. The purpose of this regulation is to clarify the distance restrictions for new fermented malt beverage and wine retailer applicants as well as the availability of the exception to the statutory distance requirement.

A. The exceptions to the five hundred (500) foot distance restriction set forth in subsection 44-3-301(12)(a.5)(II)(A) and (B), C.R.S., shall apply only if, prior to January 1, 2019, the structure for which a building permit or certificate of occupancy has been timely applied for or received was intended for use as a fermented malt beverage retailer licensed premises at the time of submitting the application for the building permit or certificate of occupancy.

Regulation 47-010. Items Approved for Sale in Fermented Malt Beverage and Wine Retailer Licenses.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-4-107(3)(c), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), and 44-3-202(2)(a)(I)(O), C.R.S. The purpose of this regulation is to define how applicable licensees must report and demonstrate compliance concerning this specific statutory requirement.

A. To demonstrate compliance with subsection 44-4-107(3), C.R.S., if applicable, the applicant or licensee must affirm on its new and annual renewal application that the license derives or will derive at least twenty (20) percent of its gross annual revenues from total sales from the sale of food items for consumption off the premises. The exceptions to the foregoing requirement, set forth in subsections 44-4-107(3)(d)(I) and (II), C.R.S., shall apply only if, prior to January 1, 2019, the structure for which a building permit or certificate of occupancy has been applied for or received was intended for use as a fermented malt beverage retailer licensed premises at the time of submitting the application for a building permit or certificate of occupancy.

B. Nothing within this regulation shall limit the authority of the state licensing authority to inspect books and records pursuant to Regulation 47-700, 1 C.C.R. 203-2, to verify this affirmation or compliance with this statutory requirement.

Regulation 47-100. Definitions.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), ~~and~~ 44-3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(R), C.R.S. The purpose of this regulation is to ensure consistent application and interpretation of common terms within the relevant articles.

A. "Licensed, licensee, and licensed premises" mean persons or premises issued a license or permit under Articles 3, Articles 4 and Article 5 of Title 44.

B. "Manufacturer" means a Colorado licensed brewery, winery, limited winery, distillery, vintner's restaurant, distillery pub or brew pub as defined by section 44-3-103, C.R.S.

C. "Nonresident manufacturer" means a Colorado licensee that manufactures malt liquor or fermented malt beverages outside the state of Colorado and has been issued a Brewer's Notice by the Alcohol and Tobacco Tax and Trade Bureau.

D. "On-site product sales promotion" means a sales promotion, featuring a particular brand of alcohol beverage, that is conducted on a retailer's licensed premises by an alcohol beverage supplier. On-site product sales promotion may include drink specials, product sampling and the giveaway of consumer goods.

E. "Sponsored event" means an event supported in whole or in part by a licensed supplier that is conducted at a retail licensed establishment.

F. "Supplier" means a Colorado licensed brewery, winery, distillery, brew pub, distillery pub, vintner's restaurant, limited winery, nonresident manufacturer, wholesaler or importer of alcohol beverages.

G. "Retailer" or an entity "licensed to sell at retail" means those persons licensed pursuant to sections 44-3-401(1)(h) – (t) and (v – w), C.R.S., and section 44-4-104(1)(c), C.R.S. to sell alcohol beverages to the end consumer.

H. "Unreasonable noise" means a level of noise that violates local noise ordinance standards, or where no local noise ordinance standard exists, a level of noise that would violate section 25-12-103, C.R.S.

I. "Wholesaler" means those entities authorized to sell alcohol beverages at wholesale to licensed retailers, including wholesalers of fermented malt beverages, malt liquors, vinous and spirituous liquors, limited wineries, brew pubs, distillery pubs, and vintner's restaurants.

J. "Sandwiches" as used in articles 3 and 5 of Title 44, C.R.S. are defined as single-serving items such as hamburgers, hot dogs, frozen pizzas, burritos, chicken wings, or items of a similar nature. "Light snacks" as used in articles 3 and 5 of Title 44, C.R.S. are defined as popcorn, pretzels, nuts, chips, or items of a similar nature.

K. "Colorado Liquor Code" or "Liquor Code" means article 3 of title 44, C.R.S.

L. "Colorado Beer and Wine Code" or "Beer and Wine Code" means article 4 of title 44, C.R.S.

M. "Special Event Code" means article 5 of title 44, C.R.S.

N. "Colorado Liquor Rules" means this regulatory article, 1 C.C.R. 203-2.

O. "Division" means the State of Colorado Department of Revenue's Liquor Enforcement Division, except as provided otherwise.

P. "Communal Outdoor Dining Area" means an outdoor space that is used for food and alcohol beverage service by two or more licensees licensed under article 3 or article 4 of title 44, C.R.S. as a:

1. Tavern;

2. Hotel and Restaurant;

3. Brew Pub;

4. Distillery Pub;

5. Vintner's Restaurant;

6. Beer and Wine Licensee;

7. Manufacturer that operates a sales room authorized under section 44-3-402(2) or (7), C.R.S.;

8. Beer wholesaler that operates a sales room under section 44-3-407(1)(b)(I), C.R.S.;

9. Limited Winery;

10. Lodging and Entertainment Facility;

11. Optional Premises; or

12. Fermented Malt Beverage Retailer licensed for consumption on the premises.

Regulation 47-200. Petitions for Statements of Position and Declaratory Orders Concerning the Colorado Liquor Code, Colorado Beer and Wine Code, Special Event Code, or Colorado Liquor Rules.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(R), and 24-4-105(11), C.R.S. The purpose of this regulation is to establish clear and comprehensive procedures and considerations required for a statement of position and/or a declaratory order.

A. Statements of Position. Any person may petition the Division for a statement of position concerning the applicability to the petitioner of any provision of the Liquor Code, Beer and Wine Code, Special Event Code, or Colorado Liquor Rules. The petition must include the information set forth in paragraph (E)(1)-(E)(6) of this regulation.

B. Service of Petition for Statement of Position. A letter for petition for a statement of position shall be served on the Division by mailing or emailing such petition to the Division with a copy sent on the same date to the local licensing authority in the county or municipality where the petitioner's licensed premises or proposed licensed premises are located, if applicable. Each petition for a statement of position shall contain a certification that the service requirements of this paragraph have been met.

C. Time to Respond. The Division shall respond to a petition for statement of position in writing within forty-five (45) days of receiving such petition and set forth its position and the reasons therefore, or the grounds on which the division declines to provide a statement of position, pursuant to section 24-4-105(11), C.R.S., and/or paragraph (G) of this regulation.

D. Declaratory Orders. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position may petition the state licensing authority within forty-five (45) days of the issuance of the statement of position for a declaratory order pursuant to section 24-4-105(11), C.R.S. Furthermore, any person who has not received a response within forty-five (45) days, may petition the state licensing authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a declaratory order pursuant to this regulation shall be the petitioner and the Division.

E. Requirements for a Petition for a Statement of Position or a Petition for Declaratory Order. Each petition for a statement of position or petition for a declaratory order shall set forth the following:

1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the Liquor Code, Beer and Wine Code, or Special Events Code and if so, the type of license or permit and address of the licensed premises.

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 the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.

4. A concise statement of the legal authorities if any, and such other reasons upon which petitioner relies.

5. A concise statement of the statement of position or declaratory order sought by the petitioner.

6. The Statement of Position previously issued if the petitioner is filing a Petition for a Declaratory Order.

F. Service of Petition for Declaratory Order. A petition for a declaratory order shall be served on the state licensing authority by mailing such petition to the state licensing authority with a copy of the petition sent on the same date to the Division, the local licensing authority in the county or municipality where the petitioner's licensed premises or proposed licensed premises are located, and to the Revenue & Utilities Section of the Colorado Department of Law. Each petition for a declaratory order shall contain a certification that the service requirements of this paragraph have been met.

G. Acceptance. The Division will determine whether to entertain any petition for statement of position. The state licensing authority will determine whether to entertain any petition for declaratory order. If either the Division or the state licensing authority decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. For a petition for declaratory order, the petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the state licensing authority more than forty-five (45) days after issuance of the statement of position.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.

3. The petition involves a subject, question or issue which is currently involved in a court action, an administrative action before the state or any local licensing authority, ongoing investigation conducted by the Division or a written complaint filed with the state licensing authority or Division.

4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.

6. The petitioner failed to properly serve the petition pursuant to this regulation.

7. The petitioner failed to include information required in paragraph (E) of this regulation.

H. Determination. If the state licensing authority determines that it will entertain the petition for declaratory order, it shall promptly so notify all parties involved, and the following procedures shall apply:

1. The state licensing authority may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing. Any such request for additional information shall be served on all parties.

2. If the state licensing authority determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, the state licensing authority shall issue a Notice to Set to all parties and on the date so set, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.

3. In ruling on a petition for declaratory order, the state licensing authority may take administrative notice of general, technical or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.

4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.

5. Any other interested person may seek leave of the state licensing authority to intervene in the proceeding and such leave may be granted if the licensing authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

6. A declaratory order shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Division for a period of five (5) years, unless the statement of position or declaratory order is superseded by a statutory or regulatory change, amended by the Division, or amended or reversed by the state licensing authority. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), and 44-3-202(2)(a)(I)(R), C.R.S. The purpose of this regulation is to establish procedures for a licensee seeking to make material or substantial alterations to the licensed premises, and provide factors the licensing authority must consider when evaluating such alterations for approval or rejection.

A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the latest approved plans and specifications on file with the state and local licensing authorities without application to, and the approval of, the respective licensing authorities.

For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior approval, shall include, but not be limited to, the following:

1. Any increase or decrease in the total size or capacity of the licensed premises.

2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises.

3. Any substantial or material enlargement of a bar, relocation of a bar, or addition of a separate bar. However, the temporary addition of bars or service areas to accommodate seasonal operations shall not require prior approval unless the additional service areas are accompanied by an enlargement of the licensed premises.

4. An outside service area located on a property owned by a municipality, a city and county, or the unincorporated area of a county, and that the licensee possesses in accordance with subsection (B)(2) of this regulation, may be approved by the state and local licensing authorities upon the annual filing of a modification of premises application, due at the time of initial application or at the time of renewal, on a form approved by the State Licensing Authority, and payment of the associated modification of licensed premises fee as set forth in Regulation 47-506, provided that:

   a. The proposed outside service area located on property owned by the municipality, city and county, or unincorporated areas of a county, is immediately adjacent to the licensed premises;

   b. The licensed premises, as temporarily modified, will comprise a definite contiguous area;

   c. Plans and specifications identifying the outside service area, including dates of seasonal operation (if applicable), accompany the form and fee;

   d. Licensees shall maintain records of the dates alcohol service occurs on the outside service area if such space is used seasonally or sporadically, and must provide records to the Division upon request; and

e. All outside service areas are closed to motor vehicle traffic by physical barriers during all times that alcohol service occurs.

5. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure detailed in the latest approved plans and specifications on file with the state and local licensing authorities. However, the following types of modifications will not require prior approval, even if a local building permit is required: painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; and any non-structural remodeling where the remodel does not expand or reduce the existing area designed for the display or sale of alcohol beverage products.

6. The destruction or demolition, and subsequent reconstruction, of a building that contained the retailer's licensed premises shall require the filing of new building plans with the local licensing authority, or in the case of manufacturers and wholesalers, with the state licensing authority. However, reconstruction shall not require an application to modify the premises unless the proposed plan for the newly-constructed premises materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications detailed in the latest approved plans and specifications on file with the state and local licensing authorities.

7. Nothing herein shall prohibit a licensee from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:

   a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages;

   b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic;

   c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare; and

   d. Any other conditions as established by the local licensing authority.

8. The addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.

9. Modification of the licensed premises to include a communal outdoor dining area, subject to the requirements of section 44-3-912, C.R.S., and Regulation 47-1103.

B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Liquor or Beer and Wine Codes and related regulations. Factors to be taken into account by the licensing authority shall include, but not be limited to, the following:

1. The reasonable requirements of the neighborhood and the desires of the adult inhabitants.

2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.

3. Compliance with the applicable zoning laws of the municipality, city and county or county.

4. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary.

5. The legislative declaration that the Liquor and Beer and Wine Codes are an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within fifteen (15) days after the date of notice.

D. This regulation shall be applicable to the holder of a manufacturer's license as specifically defined in Section 44-3-402, C.R.S., or a limited winery defined in section 44-3-403, C.R.S., only if the physical change, alteration, or modification involves any increase or decrease in the total size of the licensed premises, including the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S. Except, any change, alteration, or modification of a sales room, shall be reported in accordance with subsection (A).

E. The state licensing authority shall not impose any additional fees for the processing or review of an application for a modification of premises for the holder of a manufacturer's license, except for applications to modify the premises through the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.

Regulation 47-304. Transfer of Ownership and Changes in Licensed Entities.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-107(1), 44-3-202(2)(a)(I)(A), 44-3-202(1)(b), 44-3-202(2)(a)(I)(J), 44-3-202(2)(a)(I)(R), 44-3-301(7), 44-3-303(3)(b), and 44-3-308, C.R.S. The purpose of this regulation is to establish reporting and disclosure requirements for the identification of applicants, licensees, and their relevant financial interests to promote transparency and prevent the occurrence of statutorily prohibited financial interests between the manufacturing, wholesale, and retail tiers.

A. Corporations and Limited Liability Companies

1. If the applicant for any license under Articles 3 or Article 4 of Title 44 is a corporation or limited liability company, it shall submit with the application, the names, addresses, and individual history records of all of its principal officers, directors, or managers, and a copy of its articles of incorporation or articles of organization; and if a foreign entity, evidence of its qualification to do business within this state. In addition, each applicant shall submit the names, addresses, and individual history records of all persons owning 10% or more of the outstanding or issued capital stock, or persons holding a 10% or more membership interest.

2. Any transfer of capital stock or any change in principal officers or directors of any corporation holding a license under the provisions of the Liquor or Beer and Wine Codes and which is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, shall be reported to the respective licensing authorities within thirty (30) days after such transfer or change. With the report, the licensee shall submit the names, addresses, and individual history records for any new

officer, director, or stockholder acquiring 10% or more outstanding capital stock, as well as the corporate minutes verifying the transactions. Licensees that are subject to the Securities and Exchange Act of 1934, as amended, shall be required to do the same, except that they shall not be required to report any single transfer of outstanding capital stock of less than 10%.

3. Any transfer of membership interest or any change in managers of any limited liability company holding a license shall be reported to the respective licensing authorities within thirty (30) days after such transfer or change. With the report, the licensee shall submit the names, addresses, and individual history records for any new manager, or member acquiring 10% or more membership interest.

B. Partnerships

1. If the applicant for any license under articles 3 or 4 of title 44 is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership it shall submit with the application, the names, addresses, and individual history records of all of its general or managing partners, and a copy of its partnership agreement; and, if a foreign entity, evidence of its qualification to do business within this state. In addition, each applicant shall submit the names, addresses, and individual history records of any other partner holding a 10% or more partnership interest.

2. Any transfer of partnership interest or any change in general or managing partners of any partnership holding a license shall be reported to the respective licensing authorities within thirty (30) days after such transfer or change. With the report, the licensee shall submit the names, addresses, and individual history records for any new general or managing partner, or any other partner acquiring 10% or more partnership interest.

C. Municipalities and Other Governmental Entities

1. If the applicant for any license under articles 3 or 4 of Title 44 is a municipality or other governmental entity, it shall submit with the application, the name, address and individual history record of at least one member of its governing body, or at least one person hired or appointed by its governing body, to serve as an officer or director; except that, pursuant to section 44-3-107(1), C.R.S., a person who has an interest in a liquor license may not be listed as an officer or director on a license owned, or to be owned, by a municipality or other governmental entity if that person individually manages or receives any direct financial benefit from the operation of such license. If the governing body of a municipality or other governmental entity hires or appoints more than one officer or director, the name, address and individual history record of each such officer or director shall be submitted with the application.

2. Any change in the officers or directors of a license held by a municipality or other governmental entity shall be reported to the respective licensing authorities within thirty (30) days after such change. With the report, the licensee shall submit the names, addresses, and individual history records for any new officers or directors.

D. Entity Conversions

1. Any licensee that qualifies for an entity conversion pursuant to section 7-90-201, C.R.S., et. seq., or similar law enacted by other states, shall not be required to file a transfer of ownership application pursuant to section 44-3-303, C.R.S. upon statutory conversion, but shall submit a report containing suitable evidence of conversion within thirty (30) days of such conversion. Such evidence shall include, but not be limited to,

recognition of conversion by the Colorado Secretary of State. In addition, within thirty (30) days of the conversion, the licensee shall submit the names, addresses, and individual history records of any new officers, directors, managers, general or managing partners, and all persons having an ownership interest of 10% or more.

E. All reports required by this regulation shall be made on forms supplied by the Division.

F. For all applicants for the issuance of a license by reason of a transfer of possession of the licensed premises by methods to include operation of law, a petition in bankruptcy pursuant to federal bankruptcy law, the appointment of a receiver, a foreclosure action by a secured party, or a court order dispossessing the prior licensee of all rights of possession pursuant to article 40 of title 13, C.R.S., the licensing authorities shall consider only the requirements of section 44-3-307, C.R.S. The loss of possession of the licensed premises by the licensee does not in itself automatically invalidate, cancel or terminate the underlying license. An applicant who otherwise comes into possession of the licensed premises by operation of law, may apply for a transfer of the underlying license as provided by law pursuant to section 44-3-303, C.R.S. This provision does not prohibit a licensing authority from initiating any action as provided by law to suspend or revoke a license for loss of possession of the licensed premises.

G. No application for a transfer of ownership may be received or acted upon by either the state or local licensing authority if the previous licensee has surrendered its license and had it canceled by either authority prior to submission of the transfer application. In cases where cancellation has occurred prior to the submission of a transfer of ownership application, the license applicant shall follow the procedures for a new license application pursuant to section 44-3-311, C.R.S.

Regulation 47-312. Change of Location.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-301(9), 44-3-309, and 44-3-410, C.R.S. The purpose of this regulation is to establish procedures for a licensee requesting to change the location of the licensed premises, and provide factors the licensing authority must consider when evaluating a change for approval or rejection.

A. When a licensee desires to change the location of its licensed premises from the location named in an existing license, it shall make application to the applicable licensing authorities for permission to change location of its licensed premises, except that an application for change of location shall not be required for the demolition and reconstruction of the building in which the original licensed premises was located.

B. Applications to change location shall be made upon forms prepared by the state licensing authority and shall be complete in every detail. Each such application shall state the reason for such change, and in case of a retail license, shall be supported by evidence that the proposed change will not conflict with the desires of the adult inhabitants and the reasonable requirements of the neighborhood in the vicinity of the new location.

1. An application to change the location of a retail license shall contain a report of the local licensing authority of the town, city, county, or city and county in which the license is to be exercised. Such report shall describe the findings of the local licensing authority concerning the reasonable requirements of the neighborhood and the desires of the adult inhabitants with respect to the new location, except that pursuant to section 44-3-312(2)(a), C.R.S., the needs of the neighborhood shall not be considered for a change of location for a club license.

2. When a licensee is required by lease, lease renewal, condemnation, or reconstruction to move its licensed premises to a new address that is located within the same

shopping center, campus, fairground, or similar retail center, the local or state licensing authority may, at its discretion, waive the neighborhood needs and desires assessment requirements should it determine that the new location remains within the same neighborhood as the old location.

C. For retail licenses, no change of location shall be permitted until the state licensing authority has, after approval of the local licensing authority, considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. A local licensing authority may, at its discretion, extend the time to change the location of the licensed premises, for good cause shown. However, no extension that is beyond twelve (12) months from the original date of approval shall be granted.

D. For those licensees not subject to approval by the local licensing authority, no change of location shall be permitted until the state licensing authority has considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. The state licensing authority may, at its discretion, extend the time to change the location, for good cause shown. However, no extension that is beyond twelve months from the original date of approval shall be granted.

E. Once the licensee has changed the location of its licensed premises, the permit to change location shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains until the license is renewed.

F. For retail licenses no change of location shall be allowed except to another location within the same city, town, county, or city and county in which the license was originally issued. Except, a retail liquor store licensed on or before January 1, 2016, may apply to move its permanent location to another place within or outside the municipality or county in which the license was originally granted. Once approved, the retail liquor store licensee shall change the location of its premises within three (3) years after such approval.

1. A change of location for a fermented malt beverage and wine retailer or retail liquor store will be approved only if the new location satisfies the distance requirements in section 44-3-301(9)(a)(I)(B)-(C), C.R.S.

2. It is unlawful for a licensee to sell any alcohol beverage at a new location until permission is granted by the state licensing and local licensing authorities.

G. Upon application for change of location, public notice shall be required by the local licensing authority in accordance with Section 44-3-311, C.R.S.

H. A licensee located within 500 feet from any public or parochial school or principal campus of any college, university or seminary may apply for a change of location within the same prohibited area in accordance with the requirements of section 44-3-301(9), C.R.S., but may not apply for a change of location within any other prohibited area as defined within section 44-3-313, C.R.S.

I. A licensee that is in lawful possession of its alcohol beverage inventory at the time it receives approval from the local and state licensing authorities to change the location of its licensed premises, may continue to possess its alcohol beverage inventory for sale at the new location.

Regulation 47-313. Tastings.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(R), 44-3-301(10), 44-3-409(1)(c)(III), and 44-3-410(1)(a)(II)(B), and 44-4-104(1)(c)(I)(A), C.R.S. The purpose of this regulation is to clarify who may conduct tastings and how open and unconsumed samples must be appropriately treated after a tasting. This regulation applies only to tastings conducted on the licensed premises of retail liquor stores, liquor-licensed drugstores, and fermented malt beverage and wine retailers pursuant to section 44-3-301(10), 44-3-409(1)(c)(III), 44-3-410(1)(a)(II)(B), and 44-4-104(1)(c)(I)(A), C.R.S.

A. Tastings.

1. A tasting shall be conducted only by a person who has completed seller-server training that meets the standards established by the Division, and is:

a. A retail liquor store, liquor-licensed drugstore, or fermented malt beverage and wine retailer licensee or employee; or

b. A representative, employee, or agent of one of the following suppliers licensed by the state licensing authority:

i. Wholesaler;

ii. Brew pub;

iii. Distillery pub;

iv. Manufacturer;

v. Limited winery;

vi. Importer; or

vii. Vintner's restaurant.

B. Following a tasting, the licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises, destroy the samples immediately following the completion of the tasting, or store any open containers of unconsumed alcohol beverages in a secure area outside the sales area of the licensed premises for use only at a tasting conducted at a later time or date. A secure area means:

1. A designated area, including, but not limited to, a closet, cabinet, or safe;

2. That is upon the licensed premises and not accessible to consumers; and

3. Is secured by a locking mechanism at all times while any open containers of unconsumed alcohol beverages are stored for use at a future tasting.

C. To ensure alcohol samples are provided to a patron free of charge, as required by section 44-3-301(10)(c)(X), C.R.S., the licensee shall not charge or accept any money for a tasting, directly or indirectly, including for any education provided in connection with a tasting, or to reserve a spot at a tasting event, regardless of whether the money charged is donated to a charity or is refunded. Education shall not be considered to be provided in connection with a tasting if the tasting occurs after the education event has concluded and is available to any adult patron of

the licensee, free of charge.

D. To comply with the obligation not to serve more than four individual samples to a patron during a tasting, as required by section 44-3-301(10)(c)(IX), C.R.S., the licensee shall implement a means of tracking how many samples each patron is provided, which may include the use of a wristband, or other means of accurately tracking individual patron consumption.

E. To comply with the obligation not to serve samples to a patron over the maximum allowed volume per alcohol type, as required by section 44-3-301(10)(c)(I)(B)(III), C.R.S., a licensee serving alcohol beverages mixed with non-alcohol beverage product shall either:

1. Serve no more than the maximum allowed volume per alcohol type, per sample, of a pre-mixed beverage, if the mixing of the alcohol is not done in public view during the tasting event; or

2. Mix the alcohol beverage with the non-alcohol beverage in public view during the tasting event, wherein only the maximum allowable amount of alcohol beverage is incorporated into each mixed drink, per sample.

Regulation 47-318. Owner-Manager.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(B), 44-3-202(2)(a)(I)(J), and 44-3-202(a)(I)(R), C.R.S. The purpose of this regulation is to define the difference between a licensee/owner and a manager, and to clarify the allowable method of payment to the manager.

A. Each license under the Liquor Code or the Beer and Wine Code must be held by the owner of the establishment. “Owner” means the person or persons whose proprietary interest is such that they bear risk of loss other than as an insurer, and have opportunity to gain profit from operation or sale of the establishment.

In determining who is the “owner”, elements considered other than risk of loss and opportunity for profit will include, but are not limited to: who has the right of possession of the licensed premises, who controls the licensee, who guarantees its debts, who is beneficiary under its insurance policies, who acknowledges liability for federal, state or local taxes.

B. Owners may hire managers, and managers may be compensated on the basis of profits made, gross or net. In such cases, (except through an I.R.S. qualified retirement account), the financial interests of the manager(s) must be reported on the forms prescribed by the Division. The manager may be required to complete an individual history report and be subject to a background check. A license may not be held in the name of the manager.

C. A spouse of a licensee may hold a license in their own right if they are the owner of the licensed establishment, regardless of whether they file separate or joint income tax returns.

D. A partnership interest, limited or general, a joint venture interest, or ownership of a share or shares in a corporation which is licensed, constitutes ownership.

Regulation 47-322. Unfair Trade Practices and Competition.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-102, 44-3-103, 44-3-201(1), 44-3-202(1)(b), 44-3-202(2)(a), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(G), 44-3-202(2)(a)(I)(R), 44-3-308, and 44-4-102, C.R.S. The purpose of this regulation is to establish certain permitted and prohibited trade practices between

suppliers and retailers in order to clarify and prevent statutorily prohibited financial assistance between tiers.

Suppliers and their agents or employees may not attempt to control a retail licensee's product purchase selection by engaging in unfair trade practices or competition.

Nothing in this regulation shall apply to non-profit, charitable, or other qualifying organizations, when such organization conducts licensed events pursuant to the requirements contained in article 5 of title 44 and related regulations, and such organization does not otherwise hold a retail license pursuant to article 3 or 4 of title 44. However, nothing herein shall authorize any financial assistance for the purpose of altering or influencing an organization's product selection for said events.

Retailers may not accept any prohibited financial assistance as described herein, and suppliers are prohibited from directly or indirectly engaging in the following unfair practices:

A. Sales of alcohol beverages.

1. No vinous or spirituous liquor may be sold by a vinous or spirituous liquor manufacturer or wholesaler to a retail licensee below the laid-in cost of said vinous and spirituous liquor products.

2. No malt liquors or fermented malt beverages may be sold by a malt liquor/beverage manufacturer or wholesaler to a retail licensee below the laid-in cost of said malt liquor/beverage products.

3. Product cost per case will be determined utilizing a “Last In/First Out” basis unless a supplier has adequate records to verify that the actual cost of said products was less than the most recent shipment received.

4. A wholesaler's laid-in cost is defined as the actual proportionate invoice price and freight charge to that wholesaler or distributor, plus applicable state and federal taxes of any given product. An in-state manufacturer's laid-in cost is defined as the actual costs of the manufacturer, plus applicable state and federal taxes.

5. Certain sales of alcohol beverages below cost are not designed or intended to influence or control a retailer's product selection. The following exceptions to below cost product sales are therefore permitted:

    a. Product lines that will be discontinued by a supplier for a minimum of at least one year may be sold below cost at market value.

    b. A wholesaler's aged inventory of vinous and spirituous liquors for which the current market value has fallen substantially below the wholesaler's original purchase cost, after a period of twelve (12) months, and for which a recovery of the original cost through an increase in market value is unlikely. For aged inventories sold to retailers below their cost due to market-below-cost conditions, wholesalers shall maintain the following records for a minimum of three years:

        i. Original purchase invoice.

        ii. Aged inventory schedule verifying slow sales and drop in market value.

        iii. Other factors that had an effect on a decrease in market value (e.g. overproduction, poor media critique).

c. Products for use, but not for resale by the drink, by a non-profit organization or similar group, as defined in section 44-5-102, C.R.S., on a retailer's licensed premises, may be invoiced to a retailer at no cost. The invoice for said products must detail the products provided and the group for whose benefit it is provided. At the conclusion of the organization's event any unused product must be returned to the wholesaler, brew pub, distillery pub, or vintner's restaurant, or invoiced at a minimum of laid-in cost to the retailer.

6. Suppliers authorized to sell alcohol beverages to licensed retailers pursuant to articles 3 or 4 of title 44, may offer product discounts to licensed retailers that meet the requirements of paragraph A, and the following additional conditions:

   a. “Product Discount” shall mean a price reduction negotiated between supplier and retailer before the sale and delivery of alcohol beverage products, and where a description of the products subject to discount, and the dollar amount of the discount, is finalized and recorded in the supplier's sales records.

   b. Discount programs are not subject to time limitations, and any discount program that will affect more than a single sales transaction and sales invoice are permitted, provided that no invoice, by itself, reflects a zero cost or below-cost sale.

   c. Product discounts that are conditioned upon a retailer's commitment to prominently display the supplier's products are prohibited.

7. Any rebate, whereby a monetary value is returned by a supplier to a retailer, in cash, account credit, or free goods, as a reward or compensation for meeting a pre-specified purchase goal, is prohibited.

8. Suppliers authorized to sell alcohol beverages to licensed retailers pursuant to articles 3 or 4 of title 44, may offer account credits to licensed retailers under the following conditions:

   a. Any account credit offered on previously issued sales invoices must be in direct relation to previous product purchases, lawful returns pursuant to this regulation or other legitimate commercial transactions as authorized under articles 3 or 4 of title 44, C.R.S. and related regulations.

   b. Credits that cannot be connected with authorized business transactions, as described herein, will be considered unlawful financial assistance, and are therefore prohibited.

   c. Both the seller and retail licensee shall maintain copies of sales invoices and evidence of payment related to the transactions described in this section, in accordance with 44-3-701, C.R.S., and for the time frame specified in Regulation 47-700.

9. Wholesaler invoices provided to retail liquor store, fermented malt beverage and wine retailer, and liquor licensed drugstore licensees must clearly designate a price paid for each product, which shall not be less than the wholesaler’s laid-in cost of each product. At no point may a retail liquor store, fermented malt beverage and wine retailer, or liquor licensed drugstore licensee receive any products from a wholesaler at less than laid-in cost.

B. On-site sales promotions

1. Suppliers may conduct an on-site product sales promotion at a retailer's licensed premises subject to the following conditions:

   a. Free goods of any value may be provided to the public, provided that a supplier's representative or authorized agent, who is not the retailer or a retail employee/agent, is physically present to award free goods to the public. Suppliers shall not require a customer purchase in order for the customer to receive the free goods.

   b. If only consumer advertising specialties, as described in Regulation 47-316(A), are to be provided at the promotion, neither suppliers or their agents need be present for their distribution.

   c. Suppliers are prohibited from providing anything other than the items specified in Regulation 47-316(A) to retailers or their employees at on-site product sales promotions.

   d. Suppliers may provide or pay for any media announcement of an on-site product sales promotion that primarily advertises the product, the location, and the date and time of the promotion. The name of the retail outlet may also be mentioned.

   e. Retailers may at their own cost advertise in advance a supplier's product sales promotion.

   f. No supplier may require that a retailer change its product selection as a condition of conducting a product sales promotion. Retailers may at their option change their product selection in support of a product sales promotion.

   g. Competitors' products may not be excluded during a product sales promotion.

2. On-Premises Sampling. A supplier-sponsored consumer sampling of alcohol beverages may be held at a retailer’s premises licensed for on-premises consumption for the purpose of product sales promotion under the following conditions:

   a. A supplier-sponsored consumer sampling held at the licensed premises of a retailer licensed for on-premises consumption shall include only the alcohol beverages the retailer is licensed to sell.

   b. The supplier shall only offer its alcohol beverage product to consumers during a supplier-sponsored consumer sampling.

   c. A retailer or supplier shall not impose any charge to the consumer to enter or participate in the sampling.

   d. Product used for sampling must be invoiced by the supplier, who is authorized to sell the alcohol beverages to licensed retailers pursuant to article 3 or 4 of title 44, as if sold to the retailer.

   e. If all product listed in the sales invoice is consumed as permitted herein, the supplier may issue the retailer a credit against the entire amount of the original invoice.

f. Any remaining product must be returned to the wholesaler, or sold to the retailer at a minimum of the wholesaler's cost.

g. The supplier must be present and shall be the person who provides the sample to a consumer who is twenty-one (21) years of age or older.

h. Suppliers may provide or pay for any media announcement of a supplier-sponsored consumer sampling that primarily advertises the product, the location, and the date and time of the sampling. The name of the retail outlet may also be mentioned.

3. Off-Premises Giveaway. A supplier-sponsored consumer giveaway of sealed malt liquor or fermented malt beverages may be held at a retailer's premises licensed for off-premises consumption for the purpose of product sales promotion under the following conditions:

a. A supplier-sponsored consumer giveaway held at the licensed premises of a retailer licensed for off-premises consumption is limited to either sealed malt liquor or fermented malt beverages, whichever the retailer is licensed to sell.

b. The supplier shall only offer its malt liquor or fermented malt beverages product to consumers during a supplier-sponsored consumer giveaway.

c. A retailer or supplier shall not impose any charge to the consumer to enter or participate in the giveaway.

d. Product used for the giveaway must be invoiced by a supplier, who is authorized to sell malt liquor or fermented malt beverage to licensed retailers pursuant to article 3 or 4 of title 44, as if sold to the retailer.

e. If all product listed in the sales invoice is given away as permitted herein, the supplier may issue the retailer a credit against the entire amount of the original invoice.

f. Any remaining product must be returned to the wholesaler, or sold to the retailer at a minimum of the wholesaler's cost.

g. The supplier must be present and shall be the person who gives the sealed container to consumers. The supplier must verify that each consumer is of lawful age prior to giving away the sealed container.

h. Suppliers may provide or pay for any media announcement of a supplier-sponsored consumer giveaway that primarily advertises the product, the location, and the date and time of the giveaway. The name of the retail outlet may also be mentioned.

i. The maximum amount of malt liquor or fermented malt beverages given to each consumer shall not exceed twenty-six (26) ounces.

C. Sponsored events: Lawful Advertising

1. Suppliers may provide sponsorship fees to advertise at charitable or civic events that are temporary in nature, where the supplier's sponsorship fee affords the supplier exclusive signage rights at the retail premises, and where sponsorship proceeds are received directly by the charity or civic endeavor, and not by a licensed retailer.

2. Suppliers may provide a sponsorship fee to advertise in ballparks, resorts, racetracks, stadiums, concert venues or entertainment districts as long as such sponsorship fee is not paid to a person or entity holding a retail license at such venue, directly or indirectly, and is not intended to influence the product selection of such retailer. The retailer's product selection for the event may not change as a condition of the event sponsorship and the products of the supplier's competitors may not be excluded.

3. Suppliers may provide or pay for any media announcement of a sponsored event that primarily advertises the product, the location, and the date and time of the event. The name of the retail outlet may also be mentioned.

4. Suppliers providing sponsorship fees to advertise at the aforementioned venues may also provide those items and services authorized under regulations 47-316, 47-320, and 47-322 to the licensed retailers at, or in conjunction with, the sponsored event.

D. Retailer entertainment

Suppliers may provide food, beverages, entertainment, recreation, or the costs associated with the same, to a retailer and its employees at meetings, social events, conferences, trainings, or other similar events, subject to the following:

1. Food, beverages, entertainment, or recreation are provided when, and where, suppliers or supplier representatives are participating or present.

2. Entertainment may include tickets or admission fees for athletic or sporting events, concerts, artistic performances, festivals, and similar forms of entertainment.

3. Recreation may include fees associated with participation in athletic or sports-related activities.

4. For any supplier-provided retailer entertainment, the supplier is prohibited from providing the costs associated with lodging and travel, other than nominal ground transportation.

5. Suppliers must maintain records sufficient to verify those entertainment expenses associated with retailers and their employees. Failure to maintain such records shall not be a per se violation of this regulation, but could constitute a violation of section 44-3-701, C.R.S. or Regulation 47-700.

E. Alcohol Beverage Samples for Retailers

1. Wholesalers, or those licensed to sell at wholesale pursuant to article 3 and 4 of title 44, may furnish or give a limited amount of alcohol beverage samples to retailers licensed solely for on-premises under the following conditions:

   a. The retailer's class of liquor license permits the sale of the type of beverage offered as a sample.

   b. The providing of samples is not conditioned upon future purchases of alcohol beverages, or as compensation for any previous alcohol beverage purchase.

   c. The retailer has not purchased the product SKU of the alcohol beverage

offered as a sample within the previous six (6) months.

d. The wholesaler provides not more than 3.0 liters per brand of spirituous liquor, not more than 3.0 liters per brand of vinous liquor, and not more than one six-pack, or 72-ounce equivalent, per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity limitations stated herein, a wholesaler may furnish the next available larger size.

e. Only the retailer and its employees are authorized to taste or test those alcohol beverages given as samples, as provided herein. Nothing shall authorize a retailer to sell any samples provided or to use such the same for consumer tastings.

2. Wholesalers, or those licensed to sell at wholesale pursuant to article 3 and 4 of title 44, may furnish or give a limited amount of alcohol beverage samples to retailers licensed solely for off-premises under the following conditions:

a. The retailer's class of liquor license permits the sale of the type of beverage offered as a sample.

b. The providing of samples is not conditioned upon future purchases of alcohol beverages, or as compensation for any previous alcohol beverage purchase.

c. The wholesaler provides not more than 3.0 liters per brand of spirituous liquor, not more than 3.0 liters per brand of vinous liquor, and not more than one six-pack per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity limitations stated herein, a wholesaler may furnish the next available larger size.

d. The wholesaler is present at the time of consumption and maintains sole possession of the container after sampling. Samples, in the quantities described herein, may be left in the retailer's possession if the container seal is left intact, but must be removed from the licensed premises at the end of the day.

F. Wholesaler Trade Shows and Trade Events

1. For purposes of this Regulation 47-322(F):

a. “Trade show” means an event to which more than fourteen (14) authorized attendees are invited and which is organized and conducted by or on behalf of one or more wholesalers, as defined in Regulation 47-100(I), for the purpose of exhibiting and providing information regarding alcohol beverage products and services offered by the participating wholesaler(s), to retailers licensed to buy such alcohol beverage products from the wholesaler(s), and to provide samples of such alcohol beverage products for consumption during the event.

b. “Trade event” means an event to which fourteen (14) or fewer authorized attendees are invited and which is organized and conducted by or on behalf of one or more wholesalers, as defined in Regulation 47-100(I), for the purpose of exhibiting and providing information regarding alcohol beverage products and services offered by the participating wholesaler(s), to retailers licensed to

buy such alcohol beverage products from the wholesaler(s), and to provide samples of such alcohol beverage products for consumption during the event.

c. "Hosting on-premises retailer" means a retailer licensed for on-premises consumption on whose licensed premises a trade show or trade event is held.

d. "Authorized attendees" means, and shall be limited to:

i. Officers, directors, and employees of a retail licensee that is licensed to sell the type of alcohol beverages to be exhibited and sampled during the trade show or trade event;

ii. Other individuals affiliated with one or more retail licensees as independent consultants or experts; and

iii. No more than one adult guest of each individual authorized to attend the trade show or trade event under subparagraphs (d)(i)-(ii).

2. Trade shows or trade events are subject to the following requirements and limitations:

a. A trade show or trade event shall take place only with the permission of, and on the licensed premises of, a hosting on-premises retailer that is licensed to sell the type of alcohol beverages to be exhibited and sampled during the trade show or trade event.

b. A trade show or trade event shall not be open to the general public, and shall be limited to authorized attendees registered (either in advance or at the door). The wholesaler(s) participating in the trade show or trade event shall maintain registration records containing, at a minimum, the date of the trade show or trade event, the name of the hosting on-premises retailer, the name of each authorized attendee who attended the trade show or trade event, and the name of the licensed retailer(s) with which each authorized attendee is associated. The registration records from the trade show or trade event shall be available for inspection by the Division during the trade show or trade event and shall be provided to the Division within ten (10) days of the conclusion of the trade show or trade event.

c. By agreement, the participating wholesaler(s), the hosting on-premises retailer or both (including such entities' agents and employees) may serve samples of alcohol beverage product(s) to authorized attendees during a trade show or trade event. Such samples shall be provided to authorized attendees free of charge.

i. The entity or entities responsible for the serving of the alcohol beverage products during a trade show or trade event shall be responsible for any violations of the Liquor Code, Beer and Wine Code, or Special Event Code, and/or any regulation promulgated pursuant thereto, related to the serving of alcohol beverage products during a trade show or trade event, including, but not limited to, violations related to service of alcohol beverages to a visibly intoxicated person or to a person under twenty-one years of age.

d. Alcohol beverage products used for a trade show or trade event must comply with all applicable product registration and labeling requirements, including

those set forth in Regulation 47-904(F) and (G).

e. All taxes, fees and surcharges required by section 44-3-503, C.R.S., must be paid for all alcohol beverage products used in a trade show or trade event.

f. Invoices for alcohol beverage products used for a trade show or trade event must be clearly labeled as a "No-Cost Trade Show/Event Inventory Record" and shall be subject to the following requirements:

i. Any wholesaler participating in a trade show or trade event must invoice any alcohol beverage products to be used in the trade show or trade event to the hosting on-premises retailer. Notwithstanding any other rule or regulation to the contrary contained in 1 CCR 203-2, the wholesaler shall invoice the hosting on-premises retailer for alcohol beverage products to be used in a trade show or trade event at no cost.

ii. The hosting on-premises retailer must receive all wholesalers' invoice(s) for alcohol beverage products to be used in the trade show or trade event prior to the commencement of the trade show or trade event, and shall retain such invoice(s) for their records.

iii. Any wholesaler(s) participating in a trade show or trade event shall provide the Division with copies of all invoice(s) to be issued in accordance with this paragraph (F)(2)(f) as an accounting for all the alcohol beverage products intended to be used during the trade show, and the anticipated drop-off and pick-up dates for such alcohol product, at least three (3) days prior to the commencement of the trade show.

iv. In order to account for unanticipated changes in the alcohol beverage products to be used during a trade show or trade event, any Wholesaler(s) participating in a trade show or trade event may provide the Division with an "Amended No-cost Trade Show/Event Inventory Record" before the commencement of the scheduled trade show or trade event, provided the wholesaler(s) complied with the provisions of paragraph (F)(2)(f)(iii) of this regulation in the first instance.

v. At the conclusion of the trade show or trade event, any alcohol beverage product(s) invoiced for use during the trade show or trade event (whether opened or unopened) shall be removed from the hosting on-premises retailer's licensed premises by the wholesaler(s), or destroyed.

A. Any alcohol beverage product(s) invoiced for use during the trade show or trade event remaining on the hosting on-premises retailer's licensed premises at the conclusion of the trade show or trade event, and awaiting wholesaler pick-up, must be held in a secure area of the hosting on-premises retailer's licensed premises, kept separate from, and clearly labeled to distinguish such alcohol beverage product(s) from, the host on-premises retailer's stock, by affixing a copy of the most current invoice issued pursuant to paragraph (F)(2)(f)(iii), or (F)(2)(f)(iv) of this regulation, and marking such invoice with

the anticipated pick-up date of the alcohol beverage product(s), which shall be no more than thirty (30) days after the conclusion of the Trade Show or Trade Event.

B. Allowing any alcohol beverage product(s) invoiced for use during the trade show or trade event (whether opened or unopened) to remain on the hosting on-premises retailer's licensed premises after the conclusion of the thirty (30) day pick-up window allowed for in paragraph (F)(2)(f)(v)(A) above, shall be deemed a violation of this Regulation, for which both the wholesaler(s), and hosting on-premises retail licensee shall be responsible.

g. No delivery or exchange of alcohol beverage product(s) between a participating wholesaler and authorized buyer of same shall take place during the trade show or trade event.

h. A hosting on-premises retailer shall not be deemed to be receiving unlawful financial assistance from the wholesaler(s) participating in the trade show or trade event, so long as the hosting on-premises retailer does not directly benefit from the sale of any alcohol beverage product exhibited to or sampled by authorized attendees during the trade show or trade event.

i. All documents and information required to be provided to the Division pursuant to paragraphs (F)(2)(b) and (F)(2)(F) of this regulation, shall be provided using a method authorized by the Division (which, at the Division's discretion, may be through uploading the records to an online location specified by the Division or through electronic mail).

3. This Regulation 47-322(F) shall not apply to:

a. Events similar to those addressed in this Regulation that are organized and conducted as special events pursuant to, and in compliance with article 5 of title 44, the exemption set forth in section 44-5-108, C.R.S., provisions of article 3 of title 44 applicable to special events, and Regulations 47-1000 through 47-1022, 1 CCR 203-2.

b. Tastings conducted by a licensed winery pursuant to section 44-3-402(2), C.R.S.; by a limited winery, pursuant to section 44-3-403(2)(e), C.R.S.; by a distillery, pursuant to section 44-3-402(7), C.R.S.; by a beer wholesaler, pursuant to section 44-3-407(1)(b), C.R.S.; or as part of a festival permit, pursuant to section 44-3-404, C.R.S.

G. Consignment Sales and Lawful Product Returns

1. Wholesalers are prohibited from making consignment sales to retailers.

2. A consignment sale is an arrangement whereby a wholesaler invoices and delivers alcohol beverages to a retailer who is under no obligation to pay for such beverages until they are resold. Consignment sales also afford the retailer the right to return product to the wholesaler for any reason.

3. Wholesalers are permitted to accept a return of alcohol beverages previously sold to retailers for ordinary and usual commercial reasons and to provide account credit or product exchange. Such commercial reasons for return shall be limited to the

following:

a. Defective products: Products qualifying under this exception are those that are upon delivery, or later become, unmarketable due to contamination or deterioration of product ingredients, leaking containers, damaged labels, or missing, damaged or compromised container seals.

b. Broken containers or short-filled containers/cases: Nothing shall prevent a retailer from making a claim for the replacement of alcohol beverages that were delivered by a wholesaler in a damaged or incomplete condition, and nothing shall prevent a wholesaler from granting credible claims.

c. Error in products delivered: Any discrepancy between a retailer's product order and the products delivered may be corrected by the wholesaler within a reasonable period after delivery.

d. Discontinued products: When a manufacturer or importer discontinues the production, importation, or market availability of a product, a retailer may return any remaining product to the original wholesaler. A retailer's decision to discontinue a product does not qualify.

e. Manufacturer's product change: When a manufacturer has changed the formula, proof, label or container of an alcohol beverage, wholesalers may withdraw the product from the retailer's inventory and replace it with the newly-manufactured product.

f. Manufacturer's quality standards: To ensure freshness standards for malt liquor and fermented malt beverages, wholesalers, with retailer consent, may withdraw product from the retailer's inventory and replace it with new product, without additional charge, under the following conditions:

    i. Out of freshness standard is defined as: a product that has a pre-printed freshness date on the alcohol beverage container that is no more than thirty (30) days away from the current date.

    ii. The product to be withdrawn is undamaged and in its original packaging.

    iii. The retailer purchased the original product from the wholesaler providing the replacement, or the current wholesaler is acting as an authorized successor wholesaler.

    iv. The wholesaler replaces the product with the identical product SKU, the identical quantity, and the identical package, or with a product from the same manufacturer’s portfolio that is equal to or lesser in value to the original purchase.

    v. A wholesaler may sell a product to another retailer that was picked up because it was within thirty (30) days prior to the freshness date. The sale of this replaced product to another retailer can only be done once.

g. Retailer's seasonal operation: For those retailers who are only open for business a portion of the year due solely to seasonal influences, or for venues that operate only during scheduled events, a wholesaler may remove and grant credit for those products that are likely to spoil or violate a manufacturer's freshness standards.

h. Wholesalers that have lawfully exercised their claim to a retailer's inventory as secured creditors.

i. Products in a retailer's inventory that may no longer be sold due to statutory or regulatory changes or disciplinary actions over which the wholesaler and retailer had no control.

j. Within thirty days of evidence of an expiration or a lawful surrender and cancellation of a retail liquor license by the state licensing authority.

k. Holders of special events permits that have unsold alcohol beverages after the licensed event.

4. A return of product for the following reasons does not qualify as a return for ordinary and usual commercial reasons:

a. A retailer's overstocked inventory or slow-moving products.

b. Products for which there is only a limited-time or seasonal demand, such as holiday decanters or seasonal brands.

H. Warehousing of products for a retailer

Wholesalers shall not furnish free warehousing to retailers by delaying delivery of alcohol beverages beyond the time that payment for the product is received or, if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended pursuant to 44-3-202(2)(b), C.R.S.

I. Product resets

Resets by a supplier are permitted, but a competitor's alcohol beverage products may not be disturbed during the reset process, unless the in-state seller of the competing products has been given 72 hours written notice, during normal and customary business hours, and is not present at the time designated for the reset activity. Suppliers may furnish a retailer with a recommended shelf plan or shelf schematic.

J. Equipment rentals

All equipment rentals by a supplier to a retailer must be at fair market value.

K. Other goods

Suppliers may not provide a retailer with any other goods below fair market value except those items expressly permitted by articles 3, 4, or 5 of title 44, C.R.S, and related regulations.

When a supplier also deals in items of commerce that are not regulated by articles 3, 4, or 5 of title 44, only the following restrictions shall apply:

1. The unregulated item(s) may not be provided as an inducement, or require purchase of alcohol beverages.

2. Any equipment or other goods provided free of charge (e.g. energy drink refrigerated coolers) shall not be provided in conjunction with alcohol sales or promotions.

L. Indirect financial assistance through third party arrangements

1. A supplier's furnishing of any equipment, supplies, services, money, or other things of value to a third party that is not licensed pursuant to article 3 or 4 of title 44, C.R.S. where the benefits resulting from such things of value flow to individual licensed retailers through written agreements or otherwise, is prohibited.

2. A supplier will not be in violation of this regulation when the unlicensed third party provides the prohibited item or service to a retailer without the supplier's knowledge, and the supplier could not have reasonably foreseen that the item or service would flow to a retailer.

3. Retailers that collude with unlicensed third parties to obtain prohibited financial assistance through a third-party arrangement between a third party and a licensed supplier shall be in violation of this regulation.

4. It shall not be a violation for a supplier to furnish items or services to a retailer that are otherwise specifically authorized by regulation or any provision within articles 3 or 4 of title 44, C.R.S.

M. Value of Labor

1. Definitions for purposes of this subsection (L):

a. “Deliver” or “delivering” is the act of a supplier bringing and unloading its alcohol beverage product from its delivery vehicle onto the retailer’s licensed premises or permitted retail warehouse storage location. “Deliver” or “delivering” does not include a supplier bringing and unloading its alcohol beverage product from a permitted retail warehouse storage location to a retailer’s licensed premises.

b. “Merchandise” or “merchandising” is the act of organizing, constructing, maintaining, or stocking a display of alcohol beverage product or alcohol beverage product promotional materials, including alcohol beverage product signs, consumer advertising specialties, or point-of-sale advertising, within the retailer’s licensed premises.

c. “Price stamp” or “price stamping” is the act of affixing the retail price of alcohol beverage product to its respective shelf, refrigerator, or any other similar location within the retailer’s licensed premises.

d. “Rotate” or “rotating” is the act of moving alcohol beverage product from the rear to the front of any shelf, refrigerator, or similar location within the retailer’s licensed premises.

e. “Service” or “servicing” is the act of replacing, staging, and/or tapping kegs within a retail premises. “Service” or “servicing” also includes performing necessary cleaning of alcohol beverage dispensing equipment, to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

f. “Stock” or “stocking” is the act of placing or replenishing alcohol beverage product on any shelf, refrigerator, or similar location within the retailer’s licensed premises.

2. In a supplier's sole discretion, and if allowed by the retailer, a supplier may deliver, merchandise, price stamp, rotate, service, and stock its alcohol beverage product on the retailer's licensed premises at no cost to the retailer.

   a. A supplier is prohibited from materially disturbing another supplier's alcohol beverage product while delivering, merchandising, price stamping, rotating, servicing, or stocking its own alcohol beverage product.

   b. A supplier may only service the portion of the retailer's alcohol beverage dispensing equipment used for dispensing its alcohol beverage product.

3. A retailer is prohibited from requiring a supplier to provide any labor to the retailer, including, but not limited to, merchandising, price stamping, rotating, servicing, or stocking activities, as an express or implied condition of the delivery, purchase, or future purchases between the supplier and retailer.

4. Unless otherwise permitted under this Regulation, the Liquor Code, or the Beer and Wine Code, or unless the retailer pays the supplier at the normal hourly rate of the employee performing the labor, a supplier is prohibited from providing to a retailer, and a retailer is prohibited from accepting from a supplier, any labor other than the kinds of labor described in subsection (L)(2) of this Regulation, including, but not limited to:

   a. Cleaning, repairing, or otherwise maintaining the interior or exterior of a retailer's premises;

   b. Operating the retailer's powered mechanical equipment, other than pallet jacks; or

   c. Performing inventory for the retailer's records.

N. Prohibition.

1. Except as otherwise provided by the Liquor Code, Beer and Wine Code, or Colorado Liquor Rules, a supplier is prohibited from disturbing another supplier's alcohol beverage product.

Regulation 47-405. Festival Permit.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44- 3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(R), 44-3-404(10), and 44-3-601(9), C.R.S. The purpose of this regulation is to address eligibility, requirements, and restrictions for festival permits under section 44-3-404, C.R.S.

A. Festival Permits.

1. The following license types are eligible to obtain a festival permit or participate in a festival for which a permit has been obtained:

   a. A manufacturer license under section 44-3-402, C.R.S.;

   b. A limited winery license under section 44-3-403, C.R.S.;

c. A wholesaler's license under section 44-3-407, C.R.S.;

d. A beer and wine license under section 44-3-411, C.R.S.;

e. A hotel and restaurant license under section 44-3-413, C.R.S.;

f. A tavern license under 44-3-414, C.R.S;

g. A brew pub license under 44-3-417, C.R.S.;

h. A vintner's restaurant license under 44-3-422, C.R.S.; and

i. A distillery pub license under 44-3-426, C.R.S.

2. For purposes of this regulation, the term "permittee" means a licensee under Regulation 47- 405(A)(1) that has received a festival permit under this Regulation 47-405.

B. Initial Festival Permit Application

1. Only licensees listed in Regulation 47-405(A) may file a festival permit application with the state licensing authority. The initial festival permit application must be filed with the state licensing authority, and, if applicable the local licensing authority, at least thirty (30) calendar days before the date the first festival is to be held, and must include:

a. The eligible license type and license number of the festival permit applicant;

b. A description of the licensed premises for the first festival;

c. The date of the first festival;

d. Duration of the festival, which cannot exceed seventy-two (72) hours;

e. A processing fee of fifty dollars ($50 USD);

f. Contact information of a primary contact for each participating licensee including name, title, phone number and email address;

g. Any special event permit application that has been or will be filed in connection with the festival;

h. Confirmation that the applicant has provided notification to the local licensing authority of the location and date of the initial festival;

i. A security and control plan, which must be provided to and agreed to by each participating licensee, which specifies:

i. Hours of service of alcohol beverages;

ii. Entries and exits;

iii. How and where alcohol will be secured and stored when setting up for the festival, during the festival, and after conclusion of the festival;

iv. How visibly intoxicated parties will be handled; and

v. How the licensee plans to prevent persons under twenty-one (21) years of age from consuming or purchasing alcohol beverages.

j. Active Colorado liquor license numbers not under suspension for the applicant and each participating licensee;

k. Identification of any violations at a festival committed by the applicant or any participating licensee during the preceding three years; and

l. Such other information as required on form approved by the state licensing authority.

2. The applicant must apply with the state licensing authority and, if applicable, the local licensing authority, at least thirty (30) calendar days before holding the initial festival under the festival permit. If the applicant does not provide the application to one or both of the applicable licensing authorities at least thirty (30) calendar days before holding the initial festival, the application will be denied by the state licensing authority.

3. A festival permit must be approved by the state licensing authority before the first festival can be held.

C. Local festival permit from the Local Licensing Authority.

1. If required by the local licensing authority, the festival permit applicant must also obtain a local festival permit. The licensee must file the festival permit application with the Division at the same time they file with any local licensing authority.

2. If the licensee filing the festival permit application holds a limited winery license, or a winery license, then a festival permit from the local licensing authority is not required.

3. A festival permit from a local licensing authority is not required if the festival permit applicant also applies for a special event liquor permit issued under article 5 of title 44.

D. Subsequent Festival Permit Application(s).

1. Festival Participation Limits

a. Each permittee may hold up to but no more than a total of nine (9) festivals in a twelve (12) month period. This Paragraph 1(a) will expire on December 31, 2023.

b. A licensee may participate in up to fifty-two festivals each calendar year, including up to nine festivals held under a festival permit issued to the licensee under subsection 44-3-404(1)(c), C.R.S.

c. Each permittee may hold up to but no more than a total of nine (9) festivals in a calendar year. This Paragraph 1(c) will take effect on January 1, 2024.

2. The permittee must notify the state licensing authority, and the local licensing authority if required under Section C above, at least thirty (30) calendar days before holding any subsequent festivals under the festival permit, by filing a subsequent festival permit application. If the applicant does not provide the application to the applicable licensing authorities at least thirty (30) calendar days prior to the subsequent festival, the application will be denied by the state licensing authority. Each subsequent festival permit application must include:

a. The festival permit number;

b. The festival permit expiration date;

c. The festival permittee license name;

d. A description of the licensed premises where the festival will be held;

e. The date of the festival;

f. Duration of the festival, which cannot exceed seventy-two (72) hours;

g. The dates of all prior festivals occurring under the festival permit;

h. The number of prior festivals that have previously occurred under the festival permit;

i. A processing fee of fifty dollars ($50 USD);

j. Contact information of a primary contact for each participating licensee including name, title, phone number and email address;

k. Any special event permit application that has been or will be filed in connection with the festival;

l. Confirmation that the applicant has provided notification to the local licensing authority of the location and dates of each festival;

m. A security and control plan, which must be provided to and agreed to by each participating licensee, which specifies:

i. Hours of service of alcohol beverages;

ii. Entries and exits;

iii. How and where alcohol will be secured and stored when setting up for the festival, during the festival, and after conclusion of the festival;

iv. How visibly intoxicated parties will be handled; and

v. How the licensee plans to prevent persons under twenty-one (21) years of age from consuming or purchasing alcohol beverages.

n. Active Colorado liquor license numbers not under suspension for the applicant and each participating licensee;

o. Identification of any violations at a festival committed by the applicant or any participating licensee during the preceding three years; and

p. Such other information as required on form approved by the state licensing authority.

3. If the subsequent festival permit application is being filed in a different jurisdiction than the initial festival permit application, the permittee must ensure that an original festival

permit application is filed with the subsequent festival jurisdiction's local licensing authority, if applicable.

4. A subsequent festival permit application is deemed approved if held in the same jurisdiction as the initial festival unless the state and, if applicable, the local licensing authority provides the permittee with a notice of denial at least seventy-two hours prior to the date of the subsequent festival.

5. The permittee must file the subsequent festival permit application, but other eligible licensees may jointly participate under the festival permit issued to the permittee, unless timely denied by the state or local licensing authority.

E. Festival Tastings and Sales.

1. For purposes of this regulation 47-405, "festival tastings" is defined as consumption on the premises of a festival permit.

2. The permittee and licensees participating in the festival may conduct festival tastings and sales of their respective alcohol beverages during the festival which the permittee or licensee could conduct at their respective licensed premises.

a. Manufacturers of vinous and spirituous liquors may conduct festival tastings and sales of their products at a festival pursuant to the abilities granted to them under 44-3-402(2)(a) and/or 44-3-402(7)(a), C.R.S.

b. Manufacturers of malt liquors may conduct festival tastings and sales of their products at a festival as long as they possess a valid sales room license pursuant to 44-3-407(1)(b)(II)(A), C.R.S.

3. Regulation 47-313 on tastings applies to Retail Liquor Store, Liquor Licensed Drugstore, and fermented malt beverage and wine retailer licensees and does not apply to festival tastings.

F. Denials.

1. The state licensing authority may deny a festival permit or subsequent festival permit application if:

a. A documented history of violations under article 3 of title 44 of these regulations by the permittee or any participating licensee;

b. The permittee or any participating licensee is ineligible for a festival permit;

c. An application is incomplete or late; or

d. There is a finding that the application, if granted, would result in violations of article 3 of title 44, these regulations, or ordinances or regulations of a local licensing authority.

G. Violations.

1. Violating Licensee Identified

a. If a violation occurs during a festival permitted under this regulation and the permittee or the jointly participating licensee(s) responsible for the violation can

be identified, the state and local licensing authorities may impose appropriate penalties pursuant to section 44-3-601, C.R.S., Regulation 47-602, and Regulation 47-603 on the identified permittee or the jointly participating licensee(s) per violation.

b. Pursuant to section 44-3-601(9), C.R.S., when a permittee or participating licensee violates provisions of the Liquor Code that prohibit the service of an alcohol beverage to a minor or a visibly intoxicated person, the state and local licensing authorities shall consider it a mitigating factor if the permittee or the jointly participating licensee(s) responsible for a violation is a responsible alcohol beverage vendor as defined in section 44-3-1002, C.R.S., and pursuant to the requirements of Regulation 47-605.

2. Violating Licensee Cannot be Identified

a. If a violation occurs during a festival permitted under this regulation and the permittee or the jointly participating licensee(s) responsible for the violation cannot be identified, the state licensing authority may send a written notice to every licensee identified on the festival permit application or subsequent permit application, respectively, and may fine each the same dollar amount, which cannot exceed twenty-five (25) dollars per licensee or two hundred dollars in the aggregate per violation.

b. A joint fine levied pursuant to this subsection does not apply to the revocation or suspension of the licensee's license under section 44-3-601, C.R.S., or Regulation 47-603.

c. A joint fine levied pursuant to this section need not be reported as a substantive violation on the underlying liquor license renewal application for any permittee or jointly participating licensee assessed such a fine.

3. If a violation occurs during a special event festival as defined in Regulation 47-1014(B), a single penalty shall be imposed for a violation under this regulation and Regulation 47-1014(B) to avoid a double penalty for the same conduct.

Regulation 47-408. Purchases by Retailers.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(O), 44-3-202(2)(a)(I)(R), 44-3-411, 44-3-413, 44-3-414, 44-3-416, 44-3-417, 44-3-418, 44-3-419, 44-3-420, 44-3-422, 44-3-426, and 44-3-428, C.R.S. The purpose of this regulation is to establish purchase requirements for retailers.

A. Every person or entity licensed under the Liquor or Beer and Wine Codes to sell at retail shall purchase all alcohol beverage inventory, for the operation of its business, from a person or entity licensed to sell at wholesale pursuant to article 3 or 4 of title 44, C.R.S., except that:

1. A retailer licensed for on-premises consumption only may purchase not more than two thousand dollars' worth of such alcohol beverages during a calendar year from a retail liquor store or a liquor-licensed drugstore.

B. All alcohol beverages possessed or maintained on the retail-licensed premises shall be only such alcohol beverages acquired as set forth in this regulation, or as may have come into possession upon the issuance of a license or temporary permit pursuant to section 44-3-303, C.R.S.

C. Nothing herein shall authorize a retailer to purchase alcohol beverage inventory for its licensed operations from any public or private auction.

D. Records maintained by the licensee in compliance with section 44-3-701, C.R.S. and regulation 47-700, 1 C.C.R. 203-2 shall include all records of purchases of alcohol beverages.

E. Purchases of malt liquor and fermented malt beverages by retailers including a retailer’s purchase at the wholesaler’s licensed location(s) must be from the wholesaler designated within the territory rights pursuant to section 44-3-407(1)(b)(I), C.R.S.

Regulation 47-426. Delivery Sales by Off-Premises Licensees.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-4-107(1)(c), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(O), 44-3-202(2)(a)(I)(R), 44-3-409(3), 44-3-410(3), and 44-3-601, 44-3-701, C.R.S. The purpose of this regulation is to permit fermented malt beverage and wine retailer licensees, retail liquor stores, and liquor licensed drug stores to deliver alcohol beverage products to consumers within the requirements, restrictions, and limitations outlined in the regulation in accordance with the statutory provisions under which limited retail delivery activities are authorized.

A. Delivery Permitted.

A retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., may deliver such alcohol beverages authorized by its license to any location off the licensed premises, pursuant to the following restrictions:

1. Order.

a. The order for the alcohol beverages which are to be delivered, must be taken by the licensee or an ordering service acting as an agent of the licensee pursuant to a written agreement entered into with the licensee. Licensee shall provide a copy of said agreement to the Division prior to any orders being accepted by licensee's agent.

b. The order may be taken by written order, by telephone, in person, or via internet communication with the licensee or its agent.

c. The person placing the order must provide the licensee with their name, date of birth, and delivery address. Under no circumstances shall a person under twenty-one (21) years of age be permitted to place an order for alcohol beverages.

2. Delivery.

a. Delivery of alcohol beverages shall only be made to a person twenty-one (21) years of age or older at the address specified in the order.

b. Delivery must be made by the licensee or the licensee's employee who is at least twenty-one (21) years of age and is using a vehicle owned or leased by the licensee to make the delivery.

c. The licensee or the licensee's employee who delivers the alcohol beverages shall note and log at the time of delivery the name and identification number of the person the alcohol beverages are delivered to. Under no circumstances shall a person under twenty-one (21) years of age be permitted to receive a delivery of alcohol beverages.

d. A licensee must derive no more than fifty (50) percent of its gross annual revenues from total sales of alcohol beverages that the licensee delivers.

3. Licensees who deliver alcohol beverages shall maintain as a part of their required records, pursuant to 44-3-701, C.R.S., all records of delivery including delivery orders, receipt logs and journals. These records shall be maintained by the licensee for sixty (60) days. Failure to maintain accurate or complete records shall be a violation of this regulation.

4. Have a licensed premises with the following conditions:

a. Open to the public a minimum of three (3) days a week; and

b. Open to the public a minimum of five (5) hours each day the business is open; and

c. Have signage viewable from a public road.

5. Permit required.

a. Effective July 1, 2019, the state licensing authority will accept complete delivery permit applications from any applicant of or retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S.

b. Effective July 1, 2020, any retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., must hold a valid delivery permit issued by the state licensing authority to deliver alcohol beverages pursuant to the Liquor Code, the Beer and Wine Code, and this regulation.

c. The applicant must affirm on its delivery permit application that the applicant

derives or will derive no more than fifty (50) percent of its gross annual revenues from total sales of alcohol beverages that the applicant delivers. However, nothing within this subsection (A)(5)(c) shall limit the authority of the state licensing authority to inspect books and records pursuant to Regulation 47-700, 1 C.C.R. 203-2, to verify this affirmation or compliance with this statutory requirement.

d. A delivery permittee shall display its delivery permit at all times in a prominent place on its licensed premises. A delivery permittee shall not be required to hold or carry a copy of its delivery permit in the delivery vehicle.

e. A delivery permit shall not be required for a retailer to deliver alcohol beverages within its customary parking area.

B. Suspension or Revocation.

Any delivery made in violation of Title 44, Articles 3 and Article 4, or in violation of this regulation may be grounds for suspension or revocation of the licensee's license and/or delivery permit by the state licensing authority as provided for in section 44-3-601, C.R.S.

Regulation 47-505. Methods of payment of fees, fines or other payments made to the State Licensing Authority.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(B), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-601, 44-4-104, 44-4-105 and 44-5-104, C.R.S. The purpose this regulation is to establish acceptable methods of payment for fees, fines (including fines in lieu of suspension) and other payments to the state licensing authority under the Liquor Code, the Beer and Wine Code, the Special Event Code, or the Colorado Liquor Rules, other than excise taxes, surcharges and fees pursuant to section 44-3-503, C.R.S.

A. This regulation sets forth acceptable methods of payment to the state licensing authority, as applicable, of the following:

1. Any license, permit, application or other fee required under 44-3-501, 44-4-104, 44-4-105 and 44-5-104, C.R.S., and regulation 47-506;

2. Any fine imposed by the state licensing authority, including any fine in lieu of suspension, under section 44-3-601 and Regulations 47-600 and 47-603.

3. Any voluntary payment of the costs of an investigation pursuant to an assurance of voluntary compliance under Regulation 47-601.

B. This regulation shall not apply to payment of any excise tax, surcharge or fee required under section 44-3-503, C.R.S.

C. The method of payment for any of the fees, fines or other payments set forth in paragraph (A) of this Regulation shall be in the form of:

1. An online payment using the Division's online payment portal accessible through a link posted on the Division's website;

2. A check, including a certified or cashier's check, or money order, made payable to "DOR Liquor Enforcement Division" and mailed or delivered to the Division's main

office location; or

3. Cash, provided that:

   a. any cash payment must be hand delivered to an employee of the Division at the Division's main office location during normal business hours.

Regulation 47-506. Fees.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-301(2)(c), 44-3-501(3)-(4), and 44-3-911(4)(a)(III),C.R.S. The purpose of this regulation is to establish fees for certain applications, notices, reports, and services.

Below are the fees set by the State Licensing Authority pursuant to sections 44-3-501(3) and 44-3-501(4), C.R.S.

Alternating Proprietor Licensed Premises …….. $150.00
Application for New License ……. $1,100.00
Application for Renewal of a License ……..$125.00
(This fee will be effective from July 1, 2023, to June 30, 2024)
Application for Renewal of a License ……..$250.00
(This fee will be effective beginning July 1, 2024)
Application for Transfer License ……... $1,100.00
Application for Transfer & Conversion for an Additional Liquor-Licensed Drugstore ….. $1,100.00
Branch Warehouse or Warehouse Storage Permit …… $100.00
Change of Corporate or Trade Name ……..... $50.00
Change of Location ……..... $150.00
Concurrent Review …….. $100.00
Corporate/LLC Change (Per Person) …… $100.00
Duplicate Liquor License …… $50.00
Limited Liability Change …….. $100.00
Manager Permit Registration (Liquor-Licensed Drugstore) …… $100.00
Master File Background …….. $250.00
Master File Location Fee (Per Location) …….. $25.00
Modification of License Premises (City or County) ……..... $150.00
(except that a Temporary Modification of licensed premises to accommodate an outside service area Located on a sidewalk shall only incur an annual fee of $75.00, as outlined in Regulation 47-302(A)(4)).
New Product Registration (Per Unit) …… $0.00
Non-Contiguous Location (Winery/Limited Winery) Application Fee ..…….. $125.00
Non-Contiguous Location (Winery/Limited Winery) Renewal Fee …..…… $100.00
Optional Premises Added to H&R License (Per Unit) …… $100.00
Retail Warehouse Storage Permit …… $100.00
Sole Source Registration ……..……..... $100.00
Takeout and Delivery Permit Application Fee…… $11.00
Takeout and Delivery Permit Renewal Fee …… $11.00
Winery Direct Shipment Permit …… $100.00
Subpoena Testimony (Per Hour) ……... $50.00

Minimum of four (4) hours of appearance or on-call or travel time to court and mileage, meals, and lodging at state employee per-diem rate. Actual hourly rate for all hours in excess of four (4) hours.

Regulation 47-600. Complaints against Licensees – Suspension, Revocation, and

Fining of Licenses.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(E), 44-3-202(2)(a)(I)(R), and 44-3-601, C.R.S. The purpose of this regulation is to establish general processes and procedures required for the licensing authority to suspend, revoke, or fine a license for violations of any law, rule, or regulation of the state licensing authority.

A. Whenever a written complaint shall be filed with a licensing authority, alleging a violation by any licensee for the manufacture or sale of alcohol beverages with a violation of any law or of any of the rules or regulations adopted by the state licensing authority, the licensing authority shall investigate, as deemed appropriate, the allegations.

B. If it shall appear therefrom or shall otherwise come to the attention of the licensing authority appears from an investigation that there is reasonable cause to believe that a licensee has violated any such law, rule or regulation, the licensing authority may issue and cause to be served upon such licensee a notice of hearing and order to show cause why its license should not be suspended, revoked, or fined. Notice of discipline by the state licensing authority shall be issued pursuant to the procedures set forth in Regulation 47-606.

C. A hearing shall be held at a place and time designated by the licensing authority on the day stated in the notice, or upon such other day as may be set for good cause shown. Hearings for the state licensing authority shall be conducted in accordance with the procedures set forth in Regulation 47-606. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, evidence and statements in mitigation and/or aggravation of the offense shall also be permitted.

D. In the event the licensee is found not to have violated any law, rule, or regulation, the charges against the licensee will be dismissed. If the licensee is found to have violated some law, rule or regulation, the licensee's license may be suspended, revoked, or fined. When making a determination to suspend, revoke, or fine a license—including the amount of fine to impose—a licensing authority shall consider the severity of the violation(s) based on the provisions established in Regulation 47-603.

E. Every licensee whose license has been suspended by any licensing authority shall, if ordered by the licensing authority, post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be two feet in length and fourteen inches in width containing lettering not less than ½ " in height, and shall be in the following form:

NOTICE OF SUSPENSION
ALCOHOL BEVERAGE LICENSES ISSUED
FOR THESE PREMISES HAVE BEEN
SUSPENDED BY ORDER OF THE STATE-LOCAL LICENSING
AUTHORITY FOR VIOLATION OF THE COLORADO LIQUOR/BEER AND
WINE CODE

Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the Department suspending alcohol beverage license, shall be deemed a violation of this rule.

F. During any period of active license suspension, when such suspension has not otherwise been

stayed by a licensing authority through the payment of a fine pursuant to section 44-3-601(3) through (8), C.R.S., the licensee shall not permit the selling, serving, giving away, or consumption of alcohol beverages on the licensed premises.

G. For purposes of calculating a fine to be paid, including in lieu of an active suspension, "between", as used in subsections 44-3-601(1)(c) and 44-3-601(3)(b), C.R.S., shall include the minimum and maximum fine amounts permitted by statute.

Regulation 47-605. Responsible Alcohol Beverage Vendor.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-1002(2), C.R.S. The purpose of this regulation is to establish curricula required to be considered a responsible alcohol beverage vendor.

To be considered a responsible alcohol beverage vendor at any licensed premises, or to serve beverage alcohol at tastings held in retail liquor stores, fermented malt beverage and wine retailers, or liquor licensed drugstores, the following standards must be complied with.

A. Initial Certification Training Program Standards

1. To be designated as a responsible alcohol beverage vendor, all employees of a licensee selling/serving alcohol beverages, and any owner or manager who directly supervises such employees, must attend a training program approved by the Division.

2. Once a licensee is designated a responsible alcohol beverage vendor, all new employees involved in the sale, handling and service of alcoholic beverages must complete the training described in this regulation within 90 days of date of hire.

3. The program must include at least two (2) hours of instruction time.

4. The program must provide written documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee.

   a. Attendees that can speak and write English must successfully pass a written test with a score of 70% or better.

   b. Attendees that cannot speak or write English may be offered a verbal test, provided the same questions are given as are on the written test and the results of the verbal test are documented with a passing score of 70% or better.

5. Program providers may, at their discretion, conduct class surveys or discussions to help determine a program's effectiveness. This time shall not be counted as part of the program's instruction time.

6. Program providers may, at their discretion, omit curriculum not applicable to the licensee being trained so long as the provider provides the Division with written notice of the reason for omission in advance.

B. Initial certification training class core curriculum

1. Discussion concerning alcohol's effects on the human body

   a. Alcohol's physical effects

b. Visible signs of intoxication

c. Recognizing the signs

d. Poly-substance interactions, including but not limited to, interaction with marijuana, prescriptions and over-the-counter medication, and other substances.

2. Liquor Liability

a. Civil liability

b. Criminal liability

c. Administrative liability (License Sanctions)

d. Liability for licensee and/or managers for the actions of employees

3. Sales to visibly Intoxicated persons

a. Colorado law provisions

b. Recognition and prevention, including identifying signs of visible alcohol and drug impairment.

c. Intervention techniques

d. Related laws or issues

i. DUI/DWAI

ii. Reg. 47-900

4. Sales to minors

a. Colorado law provisions

b. Sale and service

c. Permitting consumption

5. Acceptable forms of Identification (Reg. 47-912)

a. How to check identification - protocol

b. Spotting false identification

c. Mistakes made in verification

6. Other key state laws and rules affecting owners, managers, sellers, and servers

a. Age requirements for servers and sellers

b. Provisions for confiscating fraudulent identifications

c. Removal of liquor from on-premises licensed establishment

d. Patrons prohibited from bringing liquor onto licensed premises

e. Permitted hours of sale and service

f. Conduct of establishment

g. Nudity and prohibited entertainment

h. Permitting inspections by state and local licensing and enforcement authorities

i. Reporting changes in ownership and management

j. Licensee responsible for activities occurring within licensed premises

k. Tastings in retail liquor stores, liquor licensed drugstores, and fermented malt beverage and wine retailers

l. Prohibited purchases

m. On-premises and off-premises delivery and takeout rules

n. Commonly arising issues with delivery and takeout sales

C. Information for Owners and Managers

1. Local Licensing and Enforcement

a. Encourage to become familiar with local law provisions

b. Encourage to develop a relationship with local agencies

2. State Licensing and Enforcement

a. Contact Information for the Division

b. Become familiar with state laws and regulations

c. Encourage to develop a relationship with area investigator

3. Recommendations for Licensees

a. Establish policies and procedures.

b. Establish a record keeping system to document activities and events

c. Contact local authority on incident reporting expectations

D. Training programs based on type of licensed establishment and portability of training

1. Training program curriculum may be tailored by Division-certified training program providers to on-premises only licensed establishments, to off-premises only licensed establishments, or to both on-premises and off-premises combined.

Except as noted below, all approved training programs shall include the curriculum contained in paragraphs B and C of this regulation.

2. Combined training programs must include all of the curriculum contained in paragraphs B and C of this regulation. Persons certified in a combined training program may use the certification in both on- and off-premises licensed establishments.

3. On-premises only training programs may exclude from their curriculum subparagraph B(6)(k) of this regulation relating to tastings at retail liquor stores, liquor licensed drugstores, and fermented malt beverage and wine retailers. Persons certified in an on-premises only training program may use their certification only in an on-premises licensed establishment.

4. Off-premises only training programs may exclude from their curriculum subparagraphs B(6)(c), (d), (f), and (g) relating to activities at on-premises businesses. Persons certified in an off-premises only training program may use their certification only in an off-premises licensed establishment.

5. Responsible alcohol beverage vendor trainers may request approval from the Division in writing to omit curriculum that is not detailed in paragraphs (D)(3) and/or (D)(4), and is not applicable to the licensee being trained. Once approved by the Division, the responsible alcohol beverage vendor trainer can provide the modified training to other licensees where the reason for omission is the same.

E. Recertification requirements for responsible alcohol beverage vendor certified sellers/servers

1. Recertification must occur every two (2) years, inclusive of a grace period of thirty (30) days for the licensee to retain the responsible alcohol beverage vendor designation.

2. Recertification shall be accomplished in any of the following manners:

a. Documented successful passage of a written or verbal test with a score of 70% or better administered by a Division-approved program trainer in person, including virtually through a live program, which demonstrates knowledge of new and existing alcohol beverage laws

i. Completion of a course is not required before the test is administered

ii. Failure to pass the first administration of the test shall require attendance at either a recertification course or an initial certification training program

b. Documented attendance and completion of a recertification course

c. Documented attendance and completion of an initial certification training program

3. Recertification course

a. The curriculum must cover any and all changes in the law or regulations that affect the curriculum contained in the initial certification program

b. The course must provide a refresher on the following topics:

i. Sales to intoxicated persons

ii. Sales to minors

iii. Legal sales hours

iv. Civil and criminal liabilities for law violations

c. No minimum instruction time or testing requirements shall apply

d. Records Retention The certified seller – server training program providers for the Responsible Alcohol Beverage Vendor Program must keep proof of attendance and records of successful completion of the training for a minimum of three (3) years and make the records available to the Division upon request.

F. Certification and renewal of certification as a responsible alcohol beverage vendor trainer

1. To seek Division approval as a responsible alcohol beverage vendor trainer, an individual or business entity must submit the following information:

a. A Responsible Vendor Trainer Application; and

b. A copy of the responsible alcohol beverage vendor training course curriculum, to include any written or electronic materials to be shown to attendees, and an outline of the planned presentation.

2. Within thirty (30) days of providing the first training, the trainer shall provide a video or audio recording of the training material or lecture.

3. Approved training providers must renew approval with the Division every two (2) years beginning with a certification cycle of January 1, 2023 and closing January 1, 2025 to ensure continued compliance with statutory and regulatory standards.

G. Denials, Revocations, and Suspensions of Training Providers

1. The Division may deny, revoke, or suspend a training provider's approval if the Division finds any of the following:

a. The approved training provider does not comply with the minimum standards found in this regulation;

b. The approved training provider is teaching from a responsible alcohol beverage vendor training program that is materially different than the version submitted to the Division for approval; or

c. A training provider made misstatements, omissions, misrepresentations, or untruths in connection with seeking certification or renewal of certification.

Regulation 47-606. Disciplinary and Denial Process for State Licensing Authority

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to sections 44-3-202(1)(b), 44-3-202(1)(c), 44-3-202(1)(d), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(E), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-901, 24-4-104, 24-4-105, and 24-5-101 C.R.S The purpose of this regulation is to establish what entity conducts the administrative hearings for the state licensing authority, the procedures governing administrative hearings, and other general hearings issues.

A. Initiation of Disciplinary Actions.

1. If the state licensing authority, on its own initiative or based on a complaint, has reasonable cause to believe that a licensee has violated the Liquor Code, the Beer and Wine Code, the Special Event Code, the Colorado Liquor Rules, or any of the state licensing authority's orders, the state licensing authority shall issue and serve upon the licensee an order to show cause as to why its license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

2. The order to show cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the license could be suspended, revoked, restricted, fined, or subject to other disciplinary sanction should the charges contained in the notice be sustained upon final hearing.

3. A respondent that has been served with an order to show cause shall be entitled to a hearing regarding the matters addressed therein.

B. License Denials.

1. If the state licensing authority denies an application, the state licensing authority shall inform the applicant in writing of the reasons for the denial in a notice of denial, mailed to the denied applicant at the last-known address as shown by the records of the Division and to the local licensing authority if a local license has been granted. A notice of denial shall be deemed to have been received three days after the date of mailing, if sent by mail.

2. If the denial of the application is based on a criminal conviction, the state licensing authority shall consider the factors set forth in section 24-5-101, C.R.S., and shall provide the written notice required in subsections 24-5-101(7) and (8), C.R.S.

3. A denied applicant that has been served with a notice of denial may request a hearing within the time set forth in the notice of denial by making a written request for a hearing to the Division. The request must be submitted by United States mail, by hand delivery, or by email at dor_led@state.co.us. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the notice of denial. An untimely request for hearing will not be considered.

4. A denied applicant that timely requests a hearing following issuance of a notice of denial shall be served with a Notice of Grounds for Denial and shall be entitled to a hearing regarding the matters addressed therein.

C. General Procedures – Administrative Hearings.

1. Hearing Location. Hearings will generally be conducted by the Department of Revenue's Hearings Division. Hearings will be held virtually, unless otherwise ordered by the hearing officer for good cause. If the hearing officer orders an in-person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer. Good cause for in-person hearings includes unusual circumstances where justice, judicial economy, and convenience of the parties would be served by holding a hearing in person.

2. Scope of Hearing Regulations. This Regulation shall be construed to promote the

just and efficient determination of all matters presented.

3. Right to Legal Counsel. Any denied applicant or respondent has a right to legal counsel throughout all processes described in regulations associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the denied applicant's or respondent's expense. Unless a denied applicant or respondent is an entity that satisfies the exception in section 13-1-127(2), C.R.S., the denied applicant or respondent must be represented by an attorney admitted to practice law in the state of Colorado.

D. When a Responsive Pleading is Required.

1. A respondent shall file a written answer with the hearings division and the Division within 30 days after the date of mailing of any order to show cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a respondent fails to file a required answer, the Hearing Officer, upon motion, may enter a default against that person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this Regulation, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

2. A denied applicant shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Notice of Grounds for Denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a denied applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against that person pursuant to section 24-4-105(2)(b), C.R.S. For good cause shown, as described in this Regulation, the hearing officer may set aside the entry of default within ten days after the date of such entry.

E. Hearing Notices.

1. Notice to Set. The Division shall send a notice to set a hearing to the denied applicant or Respondent in writing by electronic mail or, if an electronic mail address is unknown, by first-class mail to the last mailing address of record.

2. Notice of Hearing. The Hearings Division shall notify the Division and denied applicant or Respondent of the date, place, time, and nature of the hearing regarding denial of the license application or whether discipline should be imposed against the Respondent's license at least 30 days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

a. If an order of summary suspension has been issued pursuant to Regulation 47-602, the hearing on the order to show cause will be scheduled and held promptly.

b. Continuances may be granted for good cause, as described in this Regulation, shown. A motion for a continuance must be timely.

c. Good Cause for Continuance. Good cause for a continuance may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a

postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker. Good cause for a continuance normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

F. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the hearing officer's own motion. If a prehearing conference is held and a prehearing order is issued by the hearing officer, the prehearing order will control the course of the proceedings. Such prehearing conferences will be held virtually or by telephone, unless otherwise ordered by the hearing officer.

2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, Colorado Rules of Civil Procedure 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with paragraphs (E)(2)(b) and (c) of this Regulation.

3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the hearing officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

   a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.

   b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

   c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and denied applicant or respondent using letters.

   d. Stipulations. A list of all stipulations of fact or law reached.

4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless

modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.

5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

G. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed. Electronic filings will be accepted at: dor_regulatoryhearings@state.co.us.

3. The hearing officer shall administer oaths to all witnesses at hearing. The hearing officer may question any witness.

4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.

   a. Reports and other information that would otherwise be confidential pursuant to subsection 44-3-202(1)(d), C.R.S., may be introduced as exhibits at hearing.

   b. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.

5. Court Rules.

   a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word “court,” “judge,” or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean a hearing officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.

   b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean a hearing officer.

6. Exhibits.

   a. All documentary exhibits must be paginated by the party offering the exhibit

into evidence.

b. The Division shall use numbers to mark its exhibits.

c. The denied applicant or respondent shall use letters to mark its exhibits.

7. The hearing officer may proceed with the hearing or enter a default judgment if any party fails to appear at hearing after proper notice.

H. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an initial decision subject to review by the state licensing authority pursuant to the Colorado Administrative Procedure Act and this paragraph H.

1. Exception(s) Process. Any party may appeal an initial decision to the State licensing authority pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within 30 days after the date of mailing of the initial decision to the denied applicant or respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these regulations shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the state licensing authority is: state licensing authority, 1707 Cole Boulevard, Suite 350, Lakewood CO 80401.

2. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the state licensing authority, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.

3. Deadline Modifications. The state licensing authority may modify deadlines and procedures related to the filing of exceptions to the initial decision upon motion by either party for good cause shown.

4. No Oral Argument Allowed. Requests for oral argument will not be considered.

I. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the state licensing authority, or with conflicts counsel representing the hearing officer or state licensing authority, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the state licensing authority in connection with a hearing or with the exceptions process.

J. Liquor Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.

Regulation 47-912. Identification.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(a)(I)(R), 44-3-410(2)(a)(IV), and 44-3-901(11)(a), C.R.S. The purpose of this regulation is to define adequate identification criteria for purposes of demonstrating age, and establish the factors of an affirmative defense available to a licensee for an alleged sale to a minor.

A. Except as otherwise provided in section 44-3-901(11), C.R.S., licensees may refuse to sell alcohol beverages to any person if unable to verify the person is at least twenty-one years of age. Verification of age can be done by either:

1. Producing adequate identification of age, including any verified digital identification, that is valid and unexpired. Identification of age is adequate if it contains a picture and date of birth and is one of the following:

a. Any type of driver's license, or identification card issued by any state within the United States, the District of Columbia, any U.S. Territory, or any foreign country, including Canada or Mexico;

b. A United States military identification card or any other identification card issued by the United States government including, but not limited to, a permanent resident card, alien registration card, or consular card;

c. A passport, or passport identification card;

d. A valid consular identification card from any foreign country; or

2. Using a biometric identity verification device. For purpose of this regulation, “biometric identity verification device” means a device that instantly verifies the identity and age of a person by an electronic scan of a biometric characteristic of the person, such as a fingerprint, iris, face, or other biometric characteristic, or any combination of these characteristics; references the person’s identity and age against any record of identification described in paragraph (A)(1) of this regulation; and contemporaneously provides the licensee with identity and age verification for the person utilizing the device. Prior to using a biometric identity verification device to verify the identity and age of a person for purposes of this paragraph (A)(2), the licensee shall ensure the device provider has systems in place to:

a. Verify the authenticity of any identification records by an electronic authentication process;

b. Verify the identity of, and relevant identifying information about, the person through a secondary, electronic authentication process or set of processes utilizing commercially available data, such as a public records query or a knowledge-based authentication quiz; and

c. Securely link the authenticated record to biometric characteristics contemporaneously collected from the person and store the authenticated record in a centralized, highly secured, encrypted biometric database.

B. It shall be an affirmative defense to any administrative action brought against a licensee for alleged sale to a minor if the licensee meets its burden of proof to establish, by a preponderance of the evidence, that:

1. The minor presented fraudulent identification of the type established in paragraph (A)(1) of this regulation, and the licensee possessed an identification book issued within the past two (2) years, which contained a sample of the specific kind of identification presented for compliance purposes, or;

2. The licensee used and relied upon a biometric identity verification device that indicated the minor was twenty-one years of age or older, in accordance with paragraph (A)(2) of this regulation.

3. A licensee asserting the affirmative defense, as described in Paragraph (B)(2) of this regulation, shall be responsible for obtaining, and providing to the Division, all records necessary to establish that a biometric identity verification device was used as age verification for the transaction in question.

C. If a liquor-licensed drugstore or fermented malt beverage and wine retailer elects to use a biometric identity verification device at a self checkout machine or other mechanism described in section 44-3-410(2)(a)(III) or 44-4-107(4)(b), C.R.S., respectively, it shall not allow a consumer to complete the alcohol beverage purchase without assistance from and completion of the entire transaction by an employee of the liquor-licensed drugstore or fermented malt beverage and wine retailer.

Regulation 47-913. Age of Employees.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(R), 44-3-901(6)(p), and 44-4-106(1), C.R.S. The purpose of this regulation is to define permitted and prohibited roles for a liquor licensee's employees based upon the employee's age.

A. Nothing within this regulation shall authorize a licensee to permit a person under the age of eighteen (18) to sell, dispense, serve, or participate in the sale, dispensing, or service of alcohol beverages.

B. Except as otherwise provided by this regulation, a licensee shall not permit a person who is at least eighteen (18) years of age but less than twenty-one (21) years of age to sell, dispense, or serve alcohol beverages unless the employee is supervised by another person who is on the licensed premises and is at least twenty-one (21) years of age.

C. Tavern and lodging and entertainment licensees that do not regularly serve meals.

1. Employees or agents of the licensee must be at least twenty-one (21) years of age to handle and otherwise act with respect to malt, vinous, and spirituous liquors in the same manner as that person does with other items sold at retail and to sell such alcohol beverages or check identification of the customers of the retail outlet.

D. Retail liquor store and liquor-licensed drugstore licensees.

1. Retail liquor store and liquor-licensed drugstore licensees may permit a person who is at least eighteen (18) years of age to sell, serve, or participate in the sale or service of malt, vinous, and spirituous liquor without the need for supervision contained in subsection (B) of this Regulation.

2. Retail liquor store and liquor-licensed drugstore licensees shall not permit a person who is less than twenty-one (21) years of age to deliver malt, vinous, and spirituous liquor pursuant to Regulation 47-426, 1 C.C.R. 203-2.

E. Fermented malt beverage licensees.

1. Fermented Malt Beverage On or On/Off Retail Licenses: Subsections (A) and (B) of this regulation apply for fermented malt beverage retailers licensed for on premises and on/off premises consumption.

2. Fermented Malt Beverage and Wine Retailer Licensees.

a. Fermented malt beverage and wine retailer licensees may permit a person under eighteen (18) years of age who is supervised by a person on the premises eighteen (18) years of age or older to be employed on the licensed premises and handle fermented malt beverages or wine in the same respect as other items sold at retail, except a person under the age of eighteen (18) years of age shall not:

i. sell or dispense fermented malt beverages or wine;

ii. check age identification; or

iii. make deliveries beyond the customary parking area of the licensed premises

b. Fermented malt beverage and wine retailer licensees may permit a person who is at least eighteen (18) years of age, to sell, serve, or participate in the sale or service of fermented malt beverages or vinous liquor.

c. Fermented malt beverage and wine retailer licensees shall not permit a person who is less than twenty-one (21) years of age to deliver fermented malt beverages or vinous liquor pursuant to Regulation 47-426, 1 C.C.R. 203-2.

F. Special event permit holders:

1. No person under eighteen (18) years of age may sell, serve, dispense or handle alcohol beverages.

2. Malt, vinous, and spirituous liquors special event permittees, and fermented malt beverage special event permittees, may permit a person who is at least eighteen (18) years of age but less than twenty-one (21) years of age to sell, serve, dispense, or handle alcohol beverages when said person is under the direct supervision of a person who is at least twenty-one (21) years of age.

G. Wholesalers and Manufacturers licensed pursuant to article 3, of title 44, C.R.S.

1. Employees or agents of the licensee who are at least eighteen (18) years of age may handle and otherwise act with respect to alcohol beverages in the same manner as such person would with other items sold at wholesale, as long as they are under the direct supervision of a person who is at least twenty-one (21) years of age. However, persons under the age of twenty-one (21) shall not sell malt, vinous, or spirituous liquors or check identification of the customers of the permitted sales room.

Regulation 47-1000. Qualifications for Special Event Permit.

Basis and Purpose. The statutory authority for this regulation includes but is not limited to subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(R), and 44-5-102, C.R.S. The purpose of this regulation is to define the types of organizations that qualify for a special event permit.

A special event permit under the Special Event Code may be issued to:

A. An organization, whether or not presently licensed under the Liquor Code or Beer and Wine Code, that:

1. Has been incorporated under the laws of this state for social, fraternal, patriotic, political, educational, or athletic purposes, and not for pecuniary gain

2. Is a regularly chartered branch, lodge, or chapter of a national organization or society organized for social, fraternal, patriotic, political, educational, or athletic purposes and is nonprofit in nature.

3. Is a regularly established religious or philanthropic institution.

4. Is a state institution of higher education, to include each principal campus of such institution.

B. Any municipality, county, or special district.

C. Any political candidate who has filed the necessary reports and statements with the secretary of state pursuant to article 45 of title 1, C.R.S. As used in this regulation:

1. “Political” as used in article 5 of title 44, shall mean any political organization or political party;

2. “Political organization” means any group of registered electors who, by petition for nomination of an unaffiliated candidate as provided in section 1-4-802, C.R.S., places upon the official general election ballot nominees for public office pursuant to section 1-1-104(24), C.R.S.as defined in section 1-1-104, C.R.S.; and

3. “Political party” means either a major political party or a minor political party pursuant to 1-1-104(25), C.R.S. However, no permit shall be required for those individuals or candidates campaigning or running for public office and who sponsor fund raising activities when such activities are held in a private residence and there is no cash bar in operation.

D. An entity that is either a state agency, the Colorado Wine Industry Development Board created in section 35-29.5-103, C.R.S., or an instrumentality of a municipality or county, provided that the entity promotes:

1. Alcohol beverages manufactured in the state; or

2. Tourism in an area of the state where alcohol beverages are manufactured.

COLORADO
Department of Revenue
Specialized Business Group—
Liquor & Tobacco

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Lakewood, CO 80401

Mailing Address:
Colorado Liquor Enforcement Division
P.O. Box 17087
Denver, CO 80217-0087

To: Michelle Stone-Principato, Director of Liquor and Tobacco Enforcement Division

From: Heidi Humphreys, Interim Executive Director - Department of Revenue

Re: Statement of Adoption

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S., I, Heidi Humphreys, Interim Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following additions and amendments to rules:

1 CCR 203-2, Colorado Liquor Rules

Regulation 47-004.	Fermented Malt Beverages On or On/Off – Possession of Alcohol Liquors.
Regulation 47-008.	Fermented Malt Beverages – Limitations of License.
Regulation 47-009.	Fermented Malt Beverage and Wine Retailer Licenses Distance Requirement.
Regulation 47-010.	Items Approved for Sale in Fermented Malt Beverage and Wine Retailer Licenses.
Regulation 47-100.	Definitions.
Regulation 47-200.	Petitions for Statements of Position and Declaratory Orders Concerning the Colorado Liquor Code, Colorado Beer and Wine Code, Special Event Code, or Colorado Liquor Rules.
Regulation 47-302.	Changing, Altering or Modifying Licensed Premises.
Regulation 47-304.	Transfer of Ownership and Changes in Licensed Entities.
Regulation 47-312.	Change of location.
Regulation 47-313.	Tastings.
Regulation 47-318.	Owner-Manager.
Regulation 47-322.	Unfair Trade Practices and Competition.
Regulation 47-405.	Festival Permit.
Regulation 47-408.	Purchases by Retailers.
Regulation 47-426.	Delivery Sales by Off-Premises Licensees.
Regulation 47-505.	Methods of payment of fees, fines or other payments made to the State Licensing Authority.
Regulation 47-506.	Fees.
Regulation 47-600.	Complaints against Licensees – Suspension, Revocation, and Fining of Licenses.
Regulation 47-605.	Responsible Alcohol Beverage Vendor.
Regulation 47-606.	Disciplinary and Denial Process for State Licensing Authority.
Regulation 47-912.	Identification.
Regulation 47-913.	Age of Employees.

Regulation 47-1000. Qualifications for Special Event Permit.

The amended rules are adopted as dated in the electronic signature below.

Digitally signed by Heidi Humphreys
Date: 2023.08.25 15:16:36 -06'00'

Heidi Humphreys
Interim Executive Director/Chief Executive Officer
Colorado Department of Revenue

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Office of the Attorney General

Tracking number: 2023-00393

Opinion of the Attorney General rendered in connection with the rules adopted by the

Liquor and Tobacco Enforcement Division

on 08/25/2023

1 CCR 203-2

COLORADO LIQUOR RULES

The above-referenced rules were submitted to this office on 08/25/2023 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.

September 12, 2023 10:14:22

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-1

Rule title

3 CCR 713-1 MEDICAL RULES AND REGULATIONS 1 - eff 10/15/2023

Effective date

10/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

MEDICAL RULES AND REGULATIONS

3 CCR 713-1

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

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1.15 RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY PHYSICIAN ASSISTANTS

…

C. EXTENT AND MANNER IN WHICH A PHYSICIAN ASSISTANT MAY PERFORM ACTS CONSTITUTING THE PRACTICE OF MEDICINE WITH A COLLABORATIVE AGREEMENT IN PLACE

1. The requirements for a Collaborative Agreement applies to all collaborating physicians and physician assistants as of August 7, 2023.

2. Responsibilities of the Physician Assistant

   a. Compliance with these Rules. A physician assistant is responsible for implementing and complying with statutory requirements and the provisions of these Rules.

   b. License. A physician assistant shall ensure that the individual's license to practice as a physician assistant is active and current prior to performing any acts requiring a license.

   c. Collaborative Agreement. A physician assistant must keep on file their Collaborative Agreement at their primary location of practice and make it available to the Board upon request.

   d. Identification As A Physician Assistant. While performing acts defined as the practice of medicine, a physician assistant shall clearly identify both visually (e.g. by nameplate or embroidery on a lab coat) and verbally as a physician assistant.

   e. Chart Note. A physician assistant shall make a chart note for every patient for whom the physician assistant performs any act defined as the practice of medicine in section 12-240-107(1), C.R.S. When a physician assistant consults with any physician about a patient, the physician assistant shall document in the chart note the names of any physician consulted and the date of the consultation.

   f. Documentation. A physician assistant shall keep such documentation as necessary to assist a collaborating or other physician in performing an adequate performance assessment as set forth below in Section (C)(3)(b) of this Rule.

   g. Emergency DepartmentSettings

(1) Collaborative Agreements entered into by physician assistants in emergency departments in hospitals with Level I or II trauma center settings shall take the form of a supervisory agreement as identified in section 12-240-114.5(2)(b)(IV)(A), C.R.S.

(2) For Collaborative Agreements entered into by physician assistants in emergency departments in hospitals other than with Level I or II trauma center settings, a supervising physician or physician group may increase the number of hours for which the Collaborative Agreement is a supervisory agreement, pursuant to section 12-240-114.5(2)(b)(IV)(B), C.R.S.

3. Requirements for Physicians and Physician Groups Entering into Collaborating Agreements

a. Physicians must be actively practicing medicine in Colorado by means of a regular and reliable physical presence in Colorado. For purposes of this Rule, to practice medicine based primarily on telecommunication devices or other telehealth technologies does not constitute “actively practicing medicine in Colorado.”

b. Performance Evaluation

(1) A physician or physician group who has entered into a Collaborating Agreement with a physician assistant shall develop and carry out a periodic Performance Evaluation as required by these Rules and section 12-240-114.5(1)(c), C.R.S. The Performance Evaluation should include domains of competency relevant to the particular practice and utilize more than one modality of assessment to evaluate those domains of competency. The Performance Evaluation should take into account the education, training, experience, competency, and knowledge of the individual physician assistant for whatever practice area in which the physician assistant is engaged.

(2) The statutory relationship between the physician or physician group and physician assistant is by its nature a team relationship. The purpose of the Performance Evaluation is to enhance the collaborative nature of the team relationship, promote public safety, clarify expectations, and facilitate the professional development of an individual physician assistant.

(3) The domains of competency may be dependent upon the type of practice the physician assistant is engaged in and may include but are not limited to:

(a) Medical knowledge;

(b) Ability to perform an appropriate history and physical examination;

(c) Ability to manage, integrate and understand objective data, such as laboratory studies, radiographic studies, and consultations;

(d) Clinical judgment, decision-making and assessment of patients;

(e) Accurate and appropriate patient management;

(f) Communication skills (patient communication and communication with other care providers);

(g) Documentation and record keeping;

(h) Collaborative practice and professionalism;

(i) Procedural and technical skills appropriate to the practice.

(4) The modalities of assessment to evaluate domains of competency may include but are not limited to:

(a) Co-management of patients;

(b) Direct observation;

(c) Chart review with identification of charts reviewed;

(d) Feedback from patients and other identified providers.

(5) Performance evaluations must occur with at least the minimum frequency required in section 12-240-114.5(2)(b)(I)(C), C.R.S.

(6) A physician or physician group must maintain accurate records and documentation of the Performance Evaluations, including the initial Performance Evaluation and periodic Performance Evaluations for each physician assistant with whom they have entered into a Collaborative Agreement.

(7) The Board may audit a physician's or physician group's performance assessment records. Upon request, the physician or physician group shall produce records of the performance assessments as required by the Board.

4. Waiver of Provisions of these Rules

a. Criteria for Obtaining Waivers.

(1) Upon a showing of good cause, the Board may permit waivers of any provision of these Rules.

(2) Factors to be considered in granting such waivers include, but are not limited to: whether the physician assistant is located in an underserved or rural area; the quality of protocols setting out the responsibilities of a physician assistant in the particular practice; any disciplinary history on the part of the physician assistant or the physician entering into a Collaborating Agreement; and whether the physician assistant in question works less than a full schedule.

(3) All such waivers shall be in the sole discretion of the Board. All waivers shall be strictly limited to the terms provided by the Board. No waivers shall be granted if in conflict with state law.

b. Procedure for Obtaining Waivers.

(1) Applicants for waivers must submit a written application on forms approved by the Board detailing the basis for the waiver request.

(2) The written request should address the pertinent factors listed in Section (C)(4)(a)(2) of this Rule and include a copy of any written protocols in place for the supervision of physician assistants.

(3) Upon receipt of the waiver request and documentation, the matter will be considered at the next available Board meeting.

D. PRESCRIPTION AND DISPENSING OF DRUGS.

1. Prescribing Provisions:

a. A physician assistant may issue a prescription order for any drug or controlled substance provided that:

(1) Each prescription and refill order is entered on the patient's chart.

(2) For each written prescription issued by a physician assistant, the prescription shall contain, in legible form imprinted on the prescription, the physician assistant's name and the address of the health facility where the physician assistant is practicing.

(a) If the health facility is a multi-specialty organization, the name and address of the specialty clinic within the health facility where the physician assistant is practicing must be imprinted on the prescription.

(3) A physician assistant may not issue a prescription order for any controlled substance unless the physician assistant has received a registration from the United States Drug Enforcement Administration.

(4) For the purpose of this Rule electronic prescriptions are considered written prescription orders.

(5) The dispensing of prescription medication by a physician assistant is subject to section 12-280-120(6)(a), C.R.S.

2. Obtaining Prescription Drugs or Devices to Prescribe, Dispense, Administer or Deliver

a. No drug that a physician assistant is authorized to prescribe, dispense, administer, or deliver shall be obtained by said physician assistant from a source other than a collaborating physician, pharmacist, or pharmaceutical representative.

b. No device that a physician assistant is authorized to prescribe, dispense, administer, or deliver shall be obtained by said physician assistant from a source

other than a collaborating physician, pharmacist, or pharmaceutical representative.

E. REPORTING REQUIREMENTS

1. Collaborative Agreements.

a. A Collaborative Agreement must be in writing and maintained at the main practice location for the physician assistant.

b. The Collaborative Agreement must include the requirements set forth in section 12-240-114.5(2)(a), C.R.S.

c. The form shall be signed by the physician and the physician assistant.

d. Collaborative Agreements for physician assistants with fewer than five thousand practice hours, or for physician assistants changing practice areas with fewer than three thousand hours in the new practice area shall be a supervisory agreement and include the additional requirements set forth in section 12-240-114.5(2)(b), C.R.S.

Effective 12/30/83; Revised 05/30/85; Revised 12/30/85; Revised 8/30/92; Revised 11/30/94; Revised 12/1/95; Revised 12/14/95; Revised 3/30/96; Revised 3/30/97; Revised 9/30/97; Revised 3/30/98; Revised 9/30/98; Revised 06/30/00; Revised 12/30/01; Revised 9/30/04; Revised 2/9/06, Effective 3/31/06; Emergency Rule Revised and Effective 7/01/10; Revised 08/19/10, Effective 10/15/10; Revised 11/15/12, Effective 01/14/2013; Revised 5/22/14, Effective 7/15/14; Revised 8/20/15, Effective 10/15/15; Emergency Rule Revised And Effective 8/18/16; Permanent Rule Revised 8/18/16; Effective 10/15/16; Permanent Rule Revised 2/15/18; Emergency Rule Revised 8/17/23 and Effective 8/17/23; Permanent Rule Revised 8/17/23 and Effective 10/15/23;

…

1.32 RULES AND REGULATIONS REGARDING GENERALLY ACCEPTED STANDARDS OF MEDICAL PRACTICE REGARDING PREGNANCY-RELATED SERVICES

A. Basis: The authority for promulgation of Rule 1.32 (“these Rules”) by the Colorado Medical Board (“Board”) is set forth in sections 24-4-103, 12-240-106(1)(a), and 12-30-120(2), C.R.S.

B. Purpose: The purpose of these rules and regulations is to implement the requirements of section 12-30-120(2), C.R.S.

C. Definitions

1. “Abortion” has the meaning set forth in section 25-6-402(1), C.R.S.

2. “Medication abortion” has the meaning set forth in section 12-30-120(1)(b), C.R.S.

3. “Medication abortion reversal” has the meaning set forth in section 12-30-120(1)(c), C.R.S.

D. Standard of Care Considerations

1. Compliance with generally accepted standards of medical practice requires a licensee to exercise the same degree of knowledge, skill, and care as exercised by licensees in the same field of medicine at the time care is rendered. Substandard care cannot be excused

on the grounds that other licensees also provided care which deviates from generally accepted medical standards. Ascertaining the objectively reasonable standard of care is more than just a factual finding of what all, most, or even a "respectable minority" of licensees do. Rather, licensees will be judged according to the tenets of the school of practice to which the licensee professes to follow.

2. The Board evaluates generally accepted standards of medical practice on a case-by-case basis. Each instance of medical care will involve its own unique set of facts that the Board must evaluate against the backdrop of evidence-based practice standards when available.

3. In evaluating whether a licensee's provision of medication abortion reversal meets generally accepted standards of medical practice, the Board will evaluate the scope and nature of information exchanged between the licensee and patient prior to services being provided. The Board anticipates that a fully informed consent will include, at a minimum, information about the risks, benefits, likelihood of intended outcome of the proposed treatment, and likelihood of achieving the intended outcome without the proposed treatment in order for the patient to make an informed decision about whether to undertake the treatment. The Board anticipates that the licensee will document the substance of all informed consent discussions and will place a copy of all written informed consent disclosures within the patient's chart.

4. Although the Board will not treat medication abortion reversal as a *per se* act of unprofessional conduct, the Board does not consider administering, dispensing, distributing, or delivering progesterone with the intent to interfere with, reverse, or halt a medication abortion undertaken through the use of mifepristone and/or misoprostol to meet generally accepted standards of medical practice under section 12-240-121(1)(j), C.R.S. For other conduct that could meet the definition of medication abortion reversal, the Board will investigate such deviation on a case-by-case basis. Licensees are expected to practice evidence-based medicine, and any licensee who provides unscientific treatments that fall below the generally accepted standard of care may be subject to discipline.

Emergency Rule Adopted 8/17/23 and Effective 10/1/23; Permanent Adopted 8/17/23 and Effective 10/15/23;

PHIL WEISER
Attorney General

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Office of the Attorney General

Tracking number: 2023-00397

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/17/2023

3 CCR 713-1

MEDICAL RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/22/2023 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.

September 05, 2023 16:12:29

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-51

Rule title

3 CCR 713-51 RULE 161 - PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO 1 - eff 10/15/2023

Effective date

10/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 161 – PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

3 CCR 713-51

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

Editor's Notes

History

New rule emer. rule eff. 10/06/2022.
Entire rule eff. 01/14/2023.

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Tracking number: 2023-00395

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/17/2023

3 CCR 713-51

RULE 161 - PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

The above-referenced rules were submitted to this office on 08/18/2023 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.

September 05, 2023 16:02:47

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-52

Rule title

3 CCR 713-52 RULE 162 - PROTECTING COLORADOS WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES 1 - eff 10/15/2023

Effective date

10/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 162 – PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

3 CCR 713-52

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

Editor's Notes

History

New rule emer. rule eff. 10/06/2022.

Entire rule eff. 01/14/2023.

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Tracking number: 2023-00396

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/17/2023

3 CCR 713-52

RULE 162 - PROTECTING COLORADOS WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

The above-referenced rules were submitted to this office on 08/18/2023 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.

September 05, 2023 16:04:07

Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Naturopathic Doctor Registration

CCR number

4 CCR 749-1

Rule title

4 CCR 749-1 NATUROPATHIC DOCTORS RULES AND REGULATIONS 1 - eff 10/15/2023

Effective date

10/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Office of Naturopathic Doctor Registration

NATUROPATHIC DOCTORS RULES AND REGULATIONS

4 CCR 749-1

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

…

1.8 Definitions

The purpose of this Rule is to define terms used in these Rules and the Naturopathic Doctor Act.

…

F. "Licensed Pediatric Health Care Provider" means a licensed physician, an advanced practice nurse, or a certified midwife who treats children.

…

…

Editor's Notes

History

Entire rule eff. 02/14/2014.
Rule 10 emer. rule. eff. 05/23/2014.
Rules 1.B.4, 7-12, Appendix A eff. 06/01/2014.
Rule 10 eff. 08/30/2014.
Rules 5, 13-15 eff. 07/01/2015.
Rules 7, 8, 11, 16, Appendix A, Appendix B eff. 06/30/2016.
Rule 1.17, Appendix C emer. rules eff. 01/01/2020; expired 04/29/2020.
Rule 1.17, Appendix C eff. 04/30/2020.
Rules 1.7, 1.19, Appendix D eff. 12/15/2020.
Rules 1.19 E-F eff. 05/30/2021.
Rules 1.20, 1.21 emer. rules eff. 08/15/2022.
Rule 1.10 C eff. 09/14/2022.
Rules 1.17, 1.20, 1.21, Appendix C eff. 11/30/2022.

Annotations

Rule 1.19 E.4 (adopted 10/21/2020) was not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

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Tracking number: 2023-00394

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Office of Naturopathic Doctor Registration

on 08/22/2023

4 CCR 749-1

NATUROPATHIC DOCTORS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/22/2023 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.

September 08, 2023 10:14:21

Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-32

Rule title

5 CCR 1001-32 REGULATION NUMBER 28 Building Benchmarking and Performance Standards 1 - eff 10/15/2023

Effective date

10/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 28

Building Benchmarking and Performance Standards

5 CCR 1001-32

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

Outline of Regulation

Pursuant to Colorado Revised Statutes § 24-4-103 (12.5), materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost from the Air Quality Control Commission (the Commission), 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Some material incorporated by reference is also available through the United States Government Printing Office, online at www.govinfo.gov. Materials incorporated by reference are those editions in existence as of the date indicated and do not include any later amendments.

PART A Applicability and General Provisions

I. Purpose

I.A. This regulation establishes energy-use benchmarking data reporting and building performance requirements for owners of existing and new covered buildings in order to meet greenhouse-gas emission reductions goals for such buildings under 25-7-142(8)(a)(II)(A)-(B), C.R.S. (2022).

II. Applicability

II.A. This regulation applies to owners of covered buildings, as defined in Section III.O.

II.B. The owner of a public building must only comply with the building performance standards in Part C for that covered building upon completion of any construction or renovation project that has an estimated cost of at least $500,000 and impacts at least twenty-five percent (25%) of the covered building's square footage, excluding upgrades such as painting, flooring, or tenant finishes that do not impact energy use.

III. Definitions

III.A. "Affordable housing" means (I) for a household residing in housing on a rental basis, annual income of the household is at or below eighty percent of the area median income of households of that size in the county in which the housing is located; (II) for a household residing in housing on a home ownership basis, annual income of the household is at or below one hundred forty percent of the area median income of households of that size in the county in which the housing is located; or (III) housing that incorporates mixed-income development.

III.B. "Aggregated data" means electric or gas utility customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) and/or the compilation of customer data of one or more customers from which all unique identifiers and personal information has been removed.

III.C. "Aggregation threshold" means, for each qualifying utility, the minimum number of customer accounts associated with a covered building for which the qualifying utility may provide the owner of the covered building with aggregated data upon request without requiring each customer's consent to have the customer's energy-use data accessed or shared.

III.D. "Agricultural purpose" means a building or structure used to house farm implements, hay, unprocessed grain, poultry, livestock, or other agricultural products. For the purpose of this definition, this building or structure must not contain habitable space or a place of employment where agricultural products are processed or treated or packaged; nor is it a place used by the public. The gross floor area of a building or structure used for an agricultural purpose must include all space within the building or structure to determine if the building or structure meets the covered building exemption Section III.O.2.

III.E. "Agricultural product" means any agricultural, horticultural, viticultural, or vegetable products or poultry or poultry products grown or produced in Colorado. Agricultural products do not include "regulated marijuana" as defined by Colorado's Marijuana Enforcement Division in 1 CCR 212-3 (2022).

III.F. "Benchmarking" means to input benchmarking data into a benchmarking tool to measure and assess the energy performance and greenhouse gas pollution for a covered building for the reporting year.

III.G. "Benchmarking data" means the information related to a covered building that is input into or calculated by a benchmarking tool.

III.H. "Benchmarking tool" means the ENERGY STAR® Portfolio Manager or a successor online resource used to track and assess the performance of certain properties relative to similar properties.

III.I. "Beneficial electrification" means converting the energy source of a customer's end use from a nonelectric fuel source to a high-efficiency electric source, or avoiding the use of nonelectric fuel sources in new construction or industrial applications, if the result of the conversion or avoidance is to

III.I.1. Reduce net greenhouse gas emissions over the lifetime of the conversion or avoidance; and

III.I.2. Reduce societal costs or provide for more efficient utilization of grid resources.

III.I.3. Beneficial electrification does not include

III.I.3.a. Retail distributed generation; or

III.I.3.b. A renewable energy storage system.

III.J. "Biomedical research laboratory" means a scientific laboratory used to conduct research relating to both biology and medicine.

III.K. "Building owner" means a person possessing title to a building or property or the person's designated agent.

III.L. "Building performance standards" (BPS) means standards a covered building must meet to achieve the greenhouse gas reduction requirements under 25-7-142(8)(a)(II), C.R.S. (2022).

III.M. "Campus" means a collection of two or more buildings that are owned and operated by the same person and that have a shared purpose and function as a single property. Campus includes two or more of the buildings that comprise the capitol complex.

III.N. "CEO" means the Colorado Energy Office.

III.O. "Covered building" means a building comprising a gross floor area of fifty thousand (50,000) square feet or more that is occupied by a single occupant or a group of tenants. Covered building does not include

III.O.1. Covered buildings that are a storage facility, stand-alone parking garage, or an airplane hangar that lacks heating and cooling;

III.O.2. A building in which more than half of the gross floor area is used for manufacturing, industrial, or agricultural purposes as defined in Section III.; or

III.O.3. A single-family home, duplex, or triplex.

III.P. "Customer-owned retail distributed generation system" means retail distributed generation or a renewable energy storage system owned or controlled by a covered building owner.

III.Q. "Data center" means buildings specifically designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing. Gross floor area of data centers should include all space within the building(s) including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms, mechanical rooms for cooling equipment, administrative office areas, elevator shafts, stairways, break rooms and restrooms. When a data center is located within a larger building, the gross floor area of the data center should include only the spaces that are uniquely associated with the data center (e.g., not include spaces shared by the data center and other tenants, such as break rooms or hallways) in the building.

III.R. "Demand flexibility" means the use of communication and control technology to shift electricity use across hours of the day while delivering end-use services (e.g., air conditioning, domestic hot water, electric vehicle charging) at the same or better quality but lower cost. It does this by applying automatic control to reshape a customer's demand profile continuously in ways that either are invisible to or minimally affect the customer, and by leveraging more-granular rate structures that monetize demand flexibility's capability to reduce costs for both customers and the grid.

III.S. "Duplex" means a multi-family dwelling that has two separate residential units within one standalone building with the two units sharing a common wall or ceiling/floor and each having its own entrance.

III.T. "ENERGY STAR" means the federal program authorized by 42 U.S.C. § 6294a (2007), as amended, to help customers, businesses, and industry save money and protect the environment through the adoption of energy-efficient products and practices.

III.U. "ENERGY STAR score" means the one-to-one-hundred numeric rating generated by the ENERGY STAR Portfolio Manager as a measurement of a building's energy efficiency.

III.V. "ENERGY STAR Portfolio Manager" means the resource management tool that enables building owners to track and benchmark energy in a building, or across multiple buildings, through an online platform used to measure their performance.

III.W. "Energy-use intensity" (EUI) means a building's energy use, expressed as total site energy use per square foot per year.

III.X. "Financial hardship" means a property is experiencing at least one of the following conditions.

III.X.1. The property has been included on a city's, county's, or city and county's annual tax lien sale list within the previous two years.

III.X.2. The property is an asset subject to a court-appointed receiver that controls the asset due to financial stress.

III.X.3. The property is owned by a financial institution as a result of a default by a borrower.

III.X.4. The property has been acquired by a deed in lieu of foreclosure.

III.X.5. The property is the subject of a senior mortgage subject to a notice of default.

III.X.6. Due to the governor declaring a disaster emergency pursuant to §24-33.5-704 (4), C.R.S. (2022), the property, in at least two of the previous five years, generated annual rental income or revenue that totals sixty percent or less of the five-year average immediately preceding the disaster.

III.Y. "Greenhouse gas" (GHG) means carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF6), and nitrogen trifluoride (NF3).

III.Z. "Gross floor area" (GFA) means the total building area, as measured from the outside surface of each exterior wall of the building, including above-grade and below-grade space.

III.AA. "High-efficiency electric equipment" means electrical equipment that is, for example, certified according to ENERGY STAR, or meets the minimum efficiency requirements of the current version of American Society of Heating, Refrigerating and Air-Conditioning Engineers' (ASHRAE) Standard 90.1, 2021 International Energy Conservation Code (IECC), the Federal Energy Management Program (FEMP) efficiency requirements, or newer requirements where applicable.

III.BB. "Industrial purpose" means a building or structure used for industrial operations including, but not limited to, factories, mills, shops, processing plants, assembly plants, fabricating plants, research or development facilities, operations by energy producers, electric generation unit, refineries, meat packing plants, dairies, steel mills, cement plants, mining operations, airline operations, wastewater treatment plants, landfills, and abandoned coal mines. The gross floor area of a building or structure used for industrial operations must include all space within the building(s) at the building or structure including production or industrial operation areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts to determine if the building or structure meets the covered building exemption Section III.O.2.

III.CC. "Manufacturing purpose" means a building or structure that includes a main production area containing machinery and equipment used for producing products. The gross floor area of a building or structure used for producing products must include all space within the building(s) at the building or structure, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts to determine if the building or structure meets the covered building exemption Section III.O.2. For purposes of the exemption in Section III.O.2., manufacturing purposes does not include marijuana cultivation facilities, as defined by Colorado's Marijuana Enforcement Division in 1 CCR 212-3 (2022).

III.DD. "Mixed use building" means a building that contains multiple property types where there is not one single use type that represents 50% or more of the building or property's gross floor area, including parking gross floor area.

III.EE. "Multifamily housing" means any property used or intended to be used as a residence and that contains four or more dwelling units. Multifamily housing includes a condominium or cooperative.

III.FF. "Parking" means buildings and lots used for parking vehicles. This includes open parking lots, partially enclosed parking structures, and completely enclosed (or underground) parking structures. Parking garages may be free standing or physically connected to the property.

III.GG. “Power purchase agreement” (PPA) means an agreement executed between a covered building owner and the owner of a renewable energy resource or renewable energy storage system where the energy or share of energy produced from the renewable energy resource or renewable energy storage system is dedicated to serving the covered building. For purposes of this rule, a utility cannot be the owner of the renewable energy resource or renewable energy storage system.

III.HH. “Power usage effectiveness” (PUE) means a measure of how much energy is consumed by the power supply and cooling systems in a Data Center relative to the amount of energy delivered directly to the IT equipment. PUE is equal to the total energy consumption of a Data Center (for all fuels) divided by the energy consumption used for the IT equipment.

III.II. “Property type” means the primary use of a building. Each property type will have a different set of property use details, which refer to the business activity at the property, such as weekly operating hours, number of workers, and number of computers. If a building or property has multiple uses, for purposes of benchmarking the property type is based on the use that accounts for more than 50% of a building’s or property’s gross floor area. As referenced in the definition of mixed use building in Part A, Section III.DD., if there is not one single use type that represents 50% or more of the building or property’s gross floor area, the property type will be classified as "mixed use."

III.JJ. “Public building” means a covered building owned by: the state; a local government; a district or special district regulated under title 32; a state institution of higher education; a private institution of higher education as defined in § 23-18-102 (9), C.R.S. (2022); a school district created pursuant to article 30 of title 22; and a charter school authorized pursuant to Part 1 of Article 30.5 of Title 22 of the C.R.S. (2022).

III.KK. “Qualifying utility” means an electric or gas utility with five thousand or more active commercial and industrial service connections, accounts, or customers in Colorado, including: an investor-owned electric or gas utility; a cooperative electric association; or a municipally owned electric or gas utility. Qualifying utility also means a natural gas supplier with five or more active commercial or industrial connections, accounts, or customers in Colorado.

III.LL. “Renewable energy credit” (REC) means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one megawatt hour (MWh) of electric energy generated from a renewable energy resource.

III.MM. “Renewable energy” means useful electrical, thermal, or mechanical energy converted directly or indirectly from resources of continuous energy flow or that are perpetually replenished and whose utilization is sustainable indefinitely. The term includes, without limitation, sunlight, the wind, geothermal energy, hydrodynamic forces, and organic matter available on a renewable basis such as forest residues, agricultural crops and wastes, wood and wood wastes, animal wastes, livestock operation residue, aquatic plants, and municipal wastes.

III.NN. "Renewable energy resource" means solar, wind, geothermal, biomass that is greenhouse gas neutral, new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less and that does not require the construction of any new dams or reservoirs. A biomass electric generation facility that was in existence on or before January 1, 2021, or that has a nameplate rating of ten megawatts or less, is a renewable energy resource.

III.OO. "Renewable energy storage system" means any commercially available system, including batteries and batteries paired with on-site generation, that is capable of retaining, storing, and delivering energy by chemical, thermal, mechanical, or other means.

III.PP. "Renovation" means the repair, remodeling, restoration, and preservation of a covered building and any associated fixtures or improvements.

III.QQ. "Retail distributed generation" means a renewable energy resource or renewable energy storage that is located on any property owned or leased by any customer within the service territory of the qualifying retail utility and is interconnected on the customer's side of the utility meter. Retail distributed generation must provide electric energy primarily to serve the applicable covered building's loads and must be sized to supply no more than two hundred percent of the reasonably expected average annual total consumption of electricity at all properties owned or leased by the customer within the utility's service territory. Retail distributed generation also includes retail distributed generation resources provided to a covered building owner through a power purchase agreement or a community solar garden subscription. Retail distributed generation does not include utility-owned renewable electric generation.

III.RR. "Single-family home" means a standalone residential building designed to be used as a single-dwelling unit with one owner and no shared walls with another residence.

III.SS. "Site energy-use intensity" or "Site EUI" means the annual amount of all the energy the building consumes on-site, regardless of the source. A building's site EUI is calculated by dividing the total energy consumed by the building in one year (measured in kBtu) by the total gross floor area of the building.

III.TT. "Source energy-use intensity" or "Source EUI" means EUI calculations that consider the total amount of energy required for the building, including the energy used to produce and transmit any energy that comes from offsite.

III.UU. "State institution of higher education" means an institution as defined in § 23-1-108(7)(g)(II), CRS, (2022) and the Auraria Higher Education Center, governed pursuant to Article 70 of Title 23 of C.R.S. (2022). State institution of higher education does not include biomedical research laboratories.

III.VV. "Triplex" means a multi-family dwelling that has three separate residential units within one standalone building with the units sharing one or two common walls or ceiling/floors and each having its own entrance.

III.WW. "Under-resourced building" means a building with limited access to resources, including revenues, funding, grants, or gifts that can help with building operations or to comply with the requirements of this rule, than other buildings within the same building type in the same utility service territory. Under-resourced buildings include, but are not limited to

III.WW.1. Buildings owned by organizations that qualify at tax exempt under Section 501(c) of the Internal Review Code.

III.WW.2. Affordable housing.

III.WW.3. Buildings that are owned by an organization that provides human services that are regulated by the Colorado Department of Human Services, if those services are also provided in the building.

III.WW.4. Restricted income providers.

III.XX. "Unoccupied" means a building without occupants or tenants other than security, maintenance staff, or construction workers during a construction or renovation project.

III.YY. "Weather-normalized" means a method for modifying the measured building energy use in a specific weather year to energy use under normal weather conditions.

IV. Annual fee

IV.A. Except as provided in Section IV.B., covered building owners must pay an annual fee, by June 1 of every reporting year, to the CEO of $100 per covered building.

IV.B. Owners of public covered buildings are exempt from the payment of the annual fee.

V. Severability

If any section, clause, phrase, or standard contained in these regulations is for any reason held to be inoperative, unconstitutional, void, or invalid, the validity of the remaining portions thereof will not be affected and the Commission declares that it severally passed and adopted these provisions separately and apart.

PART B Benchmarking and Reporting Requirements

I. By June 1, 2024, and by June 1 of each year thereafter, covered building owners must report benchmarking data for the previous calendar year and additional information as specified below to the CEO on a CEO approved form. Owners of newly constructed buildings (i.e., buildings that were not built or occupied such that they had 2021 benchmarking data to submit by the initial reporting deadline of December 1, 2022) must start collecting benchmarking data once the owner has received a certificate of occupancy for the building and submit their first annual benchmarking data report the subsequent year (e.g., for a building with a certificate of occupancy starting March 1, 2023, submit by June 1, 2024, the building data from March 1, 2023, through December 31, 2023). Before submitting a benchmarking report, the covered building owner must run any automated data-checking function of the benchmarking tool and correct any errors discovered. The benchmarking data reported to the CEO must include the following.

I.A. Compliance pathway selection.

I.A.1. In the June 1, 2024, report, covered building owners, except for owners of public buildings subject to Section I.A.6., must specify which compliance pathway in Part C, Section I. the covered building owner will follow to reduce the building greenhouse gas emissions in order to achieve the 2026 targets. If a covered building owner does not specify their chosen compliance pathway, the covered building owner must reduce building greenhouse gas emissions in accordance with the energy efficiency pathway in Part C, Section I.A.1.

I.A.2. In the June 1, 2028, report, covered building owners, except for owners of public buildings subject to Section I.A.6., must specify which compliance pathway in Part C, Section I. the covered building owner will follow to reduce the building's greenhouse gas emissions in order to achieve the 2030 targets. If a covered building owner does not specify their chosen compliance pathway, the covered building owner must reduce building greenhouse gas emissions in accordance with the energy efficiency compliance pathway in Part C, Section I.A.1.

I.A.3. Covered building owners who specify the standard percent reduction compliance pathway in Part C, Sections I.A.3. or I.B.2. must submit each year of benchmarking data from 2021 up to the notification year (e.g., for a June 1, 2024, notification submit 2021-2023 data). New covered buildings for which a 2021 baseline does not exist must provide each year of benchmarking data starting with and following the year the owner receives a certificate of occupancy for the building up to the notification year.

I.A.4. Covered building owners, except for covered buildings described in Part C, Section I.D., who did not submit a compliance pathway selection in accordance with Sections I.A.1. or I.A.2. must comply by default with the energy efficiency compliance pathway in Part C, Section I.A.1. until a compliance pathway selection is submitted. Covered buildings described in Part C, Section I.D. must comply by default with a standard percent reduction compliance pathway.

I.A.5. Covered building owners who are assigned the energy efficiency compliance pathway in Part C, Section I.A.1. pursuant to Part B, Section I.A.4. may still select a percent reduction compliance pathway in either Part C, Sections I.A.3. or I.B.2. if the covered building owner submits their benchmarking data for each year from 2021 up to the current reporting year (e.g., for a June 1, 2024, report submit 2021-2023 data). New covered buildings for which a 2021 baseline does not exist must provide each year of benchmarking data starting with and following the year the owner receives a certificate of occupancy for the building.

I.A.6. Owners of public buildings

I.A.6.a. That become subject to performance standards under Part C between January 1, 2024, and December 31, 2026, must notify the CEO no later than sixty (60) days or in its next benchmarking report following completion of a construction or renovation project as described in Part A, Section II.B., whichever is sooner, of their chosen compliance pathway in Part C, Section I.

I.A.6.b. That become subject to performance standards under Part C on or after January 1, 2027, must notify the CEO in its next benchmarking report following completion of a construction or renovation project as described in Part A, Section II.B. of their chosen compliance pathway in Part C, Section I.

I.A.6.c. That specify the standard percent reduction compliance pathway in Part C, Sections I.A.3. or I.B.2. must submit each year of benchmarking data from 2021 up to the notification year (e.g., for a June 1, 2024, notification submit 2021-2023 data). Owners of public buildings for which a 2021 baseline does not exist must provide each year of benchmarking data starting with and following the year the owner receives a certificate of occupancy for the building up to the notification year.

I.A.6.d. That do not specify their chosen compliance pathway must comply by default with the energy efficiency compliance pathway in Part C, Section I.A.1. until a compliance pathway selection is submitted.

I.B. A physical description of the covered building and descriptions of its operational characteristics, including

I.B.1. The name of the covered building, if any.

I.B.2. The physical street address of the covered building, or, if no street address is assigned, then the latitude and longitude of the building or buildings.

I.B.3. The primary use(s) of the covered building.

I.B.4. The covered building's gross floor area.

I.B.5. The years in which the covered building has been certified by ENERGY STAR and the most recent date of certification, if applicable.

I.B.6. The data generated by the benchmarking tool for the covered building, including

I.B.6.a. The ENERGY STAR score, if applicable.

I.B.6.b. Monthly energy use by fuel type.

I.B.6.c. Annual electricity use by the covered building associated with the customer-owned retail distributed generation system or electricity purchased from retail distributed generation, if applicable, subject to the requirements of Part C, Sections I.B.1.b. or I.B.1.c.

I.B.6.d. Annual electricity produced by the customer-owned retail distribution generation system in kilowatt-hours (kWh) that is exported to the grid and not associated with the covered building's electricity use, if applicable.

I.B.6.e. Site energy-use intensity and source energy-use intensity.

I.B.6.f. Weather-normalized site energy-use intensity and source energy-use intensity.

I.B.6.g. Confirmation from the benchmarking tool that data quality has been checked and no errors were identified by the benchmarking tool.

I.B.6.h. Annual total electricity consumption, in kilowatt-hours (kWh), if applicable.

I.B.6.i. Annual total gas consumption, in British Thermal Units (Btu), if applicable.

I.B.6.j. Monthly peak electricity demand, if available for reporting through the benchmarking tool, if applicable.

I.B.7. Greenhouse gas emissions, including total, indirect, and direct emissions.

I.B.8. The name of the gas and/or electric utility provider(s) for the covered building.

I.B.9. The type and number of electric vehicle (EV) charging stations associated with the building and all relevant meter information.

I.B.10. Covered buildings that are marijuana cultivation facilities must report their property type as "manufacturing" in the benchmarking tool.

I.C. In addition to the data generated by the benchmarking tool, covered building owners must report to the CEO the following information, if applicable.

I.C.1. A change in property type for a covered building, if applicable, including the prior property type(s) and the new property type(s), as well as supporting documentation for the new property type(s) designation since the previous benchmarking report.

I.C.2. Any AIRS IDs associated with the covered building or covered buildings reported as a campus.

I.D. A demonstration of progress towards meeting the building performance standards in Part C. Such demonstration may include, but is not limited to, documentation of completed or planned energy efficiency measures or replacements of fossil fuel equipment with high-efficiency electric equipment, including dates completed and/or the timeframe for any planned measures or replacements, as well as results from the ENERGY STAR Portfolio Manager Building Emissions Calculator in a spreadsheet (.xlsx) file downloaded from the calculator.

I.E. Covered building owners who utilize their customer-owned retail distributed generation system or renewable energy resource as specified in Part C, Section I.B. must submit documentation of the ownership and retirement of their renewable energy credits to demonstrate compliance.

I.F. The following covered building owners may report benchmarking data at the campus-wide level.

I.F.1. The owner of multiple covered buildings that are part of a master metered group of buildings without sub-metering.

I.F.2. The owner of a correctional facility, local jail, or private-contract prison, as defined in 17-1-102, CRS (2022); 31-15-401(1)(j), CRS (2022); municipal jail, as authorized in 31-15401(1)(j), CRS (2022); or juvenile detention facility governed by Part 15 of Article 2.5 of Title 19 of Colorado Revised Statutes (2022).

I.F.3. The owner of a public building that is a covered building.

I.G. Covered building owners reporting benchmarking data at the campus-wide level must also submit documentation of the number of covered buildings that are part of the campus; the property type of each of the covered buildings; the meter information for each building; and the gross floor area, including parking, of each of the covered buildings.

I.H. Covered building owners must include in the 2027 through 2030 benchmarking data report a demonstration that the covered building met the 2026 site EUI, greenhouse gas emission reduction target, data center target, or building specific target as provided in Part C.

I.H.1. Building owners demonstrating compliance under Part C, Section I.A., must include the 2026, or subsequent year through 2029 (e.g., in the 2028 report include the data reflecting 2027) results from the ENERGY STAR Portfolio Manager, specifically the weather-normalized site EUI. In meeting the site EUI targets in Part C, Section I.A., individual building site EUIs must be normalized for weather and, if and when available in ENERGY STAR Portfolio Manager, normalized for occupancy.

I.H.2. Building owners demonstrating compliance under Part C, Section I.B., must include the 2026, or subsequent year through 2029 (e.g., in the 2028 report include the data reflecting 2027) results from the ENERGY STAR Portfolio Manager Building Emissions Calculator in a spreadsheet (.xlsx) file downloaded from the calculator. Building owners must also include, if applicable, documentation of the building's high-efficiency electric equipment, including, but not limited to, the equipment's ENERGY STAR certification, compliance with FEMP efficiency requirements, compliance with ASHRAE Standard 90.1 or IECC 2021, or newer requirements if applicable.

I.H.3. Building owners demonstrating compliance under Part C, Sections I.C. or I.D., must demonstrate that the covered building has met its applicable building specific target for 2026, or subsequent year through 2029 (e.g., in the 2028 report include the data reflecting 2027).

I.H.4. Building owners demonstrating compliance through an adjustment under Part C, Section II. must include the specific adjusted timeline or target as approved by the CEO and documentation demonstrating the building owner's progress on the submitted plan to achieve an adjusted timeline, if applicable.

I.I. Covered building owners must include in the 2031 benchmarking data report, and each year thereafter, a demonstration that the covered building met the 2030 site EUI, greenhouse gas emission reduction target, data center target, or building specific target as provided in Part C.

I.I.1. Building owners demonstrating compliance under Part C, Section I.A., must include the 2030, or subsequent year (e.g., in the 2032 report include the data reflecting 2031) results from the ENERGY STAR Portfolio Manager, specifically the weather normalized site EUI. In meeting the site EUI targets in Part C, Section I.A., individual building site EUIs must be normalized for weather and, if and when available in ENERGY STAR Portfolio Manager, normalized for occupancy.

I.I.2. Building owners demonstrating compliance under Part C, Section I.B., must include the 2030, or subsequent year (e.g., in the 2032 report include the data reflecting 2031) results from the ENERGY STAR Portfolio Manager Building Emissions Calculator in a spreadsheet (.xlsx) file downloaded from the calculator. Building owners must also include, if applicable, documentation of the building's high-efficiency electric equipment, including, but not limited to, the equipment's ENERGY STAR certification, compliance with FEMP efficiency requirements, compliance with ASHRAE Standard 90.1 or IECC 2021, or newer requirements if applicable.

I.I.3. Building owners demonstrating compliance under Part C, Sections I.C. or I.D., must demonstrate that the covered building has met its applicable building specific target for 2030, or subsequent year (e.g., in the 2032 report include the data reflecting 2031).

I.I.4. Building owners demonstrating compliance through an adjustment under Part C, Section II. must include the specific adjusted timeline or target as approved by the CEO and documentation demonstrating the building owner's progress on the submitted plan to achieve an adjusted timeline, if applicable.

II. Waivers, extensions, and exemptions

II.A. Waivers

II.A.1. A covered building owner may seek a waiver from the annual requirement to report benchmarking data in Part B, Section I. The waiver request must be submitted on a CEO approved form. To seek a waiver, the covered building owner must submit waiver documentation to and receive approval from the CEO. The covered building owner must submit a new waiver request for each year the owner is seeking a waiver. Covered building owners applying for a report waiver for the calendar year to be benchmarked must submit a waiver application to the CEO any time after June 1 of the calendar year to be benchmarked and on or before May 1 of the reporting year (e.g., for calendar year 2023 data, the waiver request must be submitted between June 1, 2023, and May 1, 2024). The CEO may approve an alternate timeline for submitting a waiver request on a case by case basis. A benchmarking waiver request must establish that the covered building has met one or more of the following conditions for the calendar year to be benchmarked.

II.A.1.a. The covered building was unoccupied for at least thirty consecutive days of the year.

II.A.1.b. A demolition permit was issued for the entire covered building. Submission of a copy of the demolition permit is required.

II.A.1.c. The covered building met one or more of the conditions for financial hardship.

II.A.1.d. The covered building does not meet a qualifying utility's aggregation threshold and one or more of the utility customers refused to provide the owner with permission to access the utility customer's relevant energy-use data. The covered building owner must provide proof to the CEO that it requested permission from the utility customer or utility customers withholding consent at least thirty days before the benchmarking report was due, and the owner must submit a plan to the CEO to include an energy-use data sharing permission provision in the next lease renewal for the building's tenants.

II.A.1.e. The covered building has four or more utility customers, is not located within a qualifying utility's service territory, and the owner is unable to obtain aggregated data from the utility that serves the covered building.

II.A.2. A covered building owner who is not listed in Part B, Section I.F., may seek a waiver from the annual requirements to report benchmarking data on a per building basis and request to instead submit benchmarking data as a campus if there is a compelling state or national security interest for the covered building owner to do so. The covered building owner must provide information to the CEO documenting why they are requesting to submit benchmarking data as a campus. The CEO may work with the covered building owner to permit the owner to submit benchmarking data in a format other than through the benchmarking tool in order to address state or national security interests related to data reporting.

II.B. Extensions

II.B.1. A covered building owner may request a time extension from the CEO to submit a benchmarking report if the owner submits documentation to the CEO demonstrating that, despite the owner's good-faith effort, the owner was unable to complete the benchmarking report for the calendar year to be benchmarked in a timely manner because of the failure or refusal of a qualifying utility or a utility customer to provide the necessary information or permission, as applicable.

II.B.2. Covered building owners that request a benchmarking report time extension must submit the extension application to the CEO by May 15 of the reporting year (e.g., by May 15, 2024, for calendar year 2023 data) on a CEO-approved form.

II.C. Exemptions

II.C.1. The owner of a building with a gross floor area of 50,000 square feet or more that is occupied by a single occupant or group of tenants may, in the interest of regulatory certainty, request from the CEO an affirmative exemption from the annual requirement to report benchmarking data in Part B, Section I. if their building does not meet the definition of a covered building in Part A, Section III.O.

II.C.1.a. Any exemption request must be submitted on a CEO approved form and include all required information to be considered.

II.C.1.b. Building owners may apply for an exemption that will be in place until June 1, 2026. After June 1, 2026, building owners that have been approved for an exemption must reapply.

II.C.1.c. After June 1, 2026, building owners applying for an exemption for the calendar year to be benchmarked must submit an exemption application to the CEO any time after June 1 of the calendar year to be benchmarked and on or before May 1 of the reporting year (e.g., for calendar year 2027 data, the exemption request must be submitted between June 1, 2027, and May 1, 2028). The CEO may approve an alternate timeline for submitting an exemption request on a case by case basis.

II.C.2. Owners of single-family homes, duplexes, or triplexes are not required to file an annual exemption request but must report their benchmarking data annually if the property type changes such that the building meets the definition of and applicability for a covered building.

II.D. If a covered building owner’s waiver or exemption request is denied by the CEO, the building owner may request the CEO executive director (or their designee) to review the

determination. The building owner must request the review within sixty (60) days of the initial denial and before the June 1 reporting deadline for the calendar year in which the waiver was applied for. The executive director (or their designee) will make a recommendation on the waiver or exemption request within ninety (90) days of the review request.

PART C Building Performance Standards and Compliance Pathways

I. Compliance pathways

Owners of covered buildings must reduce building greenhouse gas emissions through one of the following building performance standards compliance pathways. Owners of covered buildings must comply with the performance standard in the selected compliance pathway on an annual basis beginning in 2026. Owners of covered buildings must meet and maintain the 2026 standard for the calendar years 2026 through 2029 and the 2030 standard for calendar years 2030 through 2050, unless otherwise extended by subsequent rules of the Commission.

I.A. Energy efficiency

I.A.1. The covered building owner must reduce the energy consumption of the building through the implementation of energy efficiency measures and/or technologies to meet the applicable property type weather-normalized site EUI target in Table 1.

I.A.2. Building owners who received a waiver for the 2021 benchmarking requirement or building owners who did not submit benchmarking data will automatically be assigned a weather-normalized site EUI target based on the data submitted for the other buildings of the same property type.

I.A.3. Standard percent reduction

I.A.3.a. A covered building owner unable to achieve the site EUI target in Table 1 may comply by achieving and maintaining a standard percent reduction in their covered building's weather-normalized site EUI as compared to the covered building's 2021, or first reporting year, benchmarked baseline weather-normalized site EUI. Under this compliance pathway, the covered building must

I.A.3.a.(i) In 2026, achieve and maintain a standard percent reduction of 13% in comparison to the covered building's 2021 benchmarked baseline weather-normalized site EUI.

I.A.3.a.(ii) In 2030, achieve and maintain a standard percent reduction of 29% in comparison to the covered building's 2021 benchmarked baseline weather-normalized site EUI.

I.B. Greenhouse gas intensity reductions

I.B.1. A covered building owner unable to achieve the building performance standards in Part C, Section I.A. may demonstrate compliance through reduction of greenhouse gas emissions attributable to the building's energy use through energy efficiency or replacing fossil fuel equipment with high-efficiency electric equipment. A building owner unable to fully comply with the greenhouse gas compliance pathway target may use customer-owned retail distributed generation systems or retail distributed generation or utility subscription services in accordance with the requirements of Sections I.B.1.b. or I.B.1.c. or I.B.1.d., or may achieve greenhouse gas reductions through alternative measures approved by the CEO in accordance with Section I.B.1.e. In order to use customer-owned retail distributed generation systems or retail distributed generation, the covered building owner must demonstrate that the covered building owner has submitted an energy audit to the CEO and demonstrated that a building owner has exhausted cost-effective energy efficiency and electrification measures for the covered building. In using renewable energy generated by a customer-owned retail distributed generation system or retail distributed generation, a covered building owner.

I.B.1.a. Must demonstrate that the covered building has not met the applicable greenhouse gas emissions intensity target in Table 1 using the ENERGY STAR Portfolio Manager Building Emissions Calculator. A covered building owner must demonstrate this by doing the following

I.B.1.a.(i) Import or upload the data for the covered building from ENERGY STAR Portfolio Manager to the ENERGY STAR Portfolio Manager Building Emissions Calculator;

I.B.1.a.(ii) Apply the applicable Colorado locality-specified emission factor for grid-supplied electricity to the results to obtain total greenhouse gas emissions; and

I.B.1.a.(iii) Divide the covered building's total greenhouse gas emissions from the ENERGY STAR Portfolio Manager Building Emissions Calculator by the square footage of the building to determine the building's greenhouse gas intensity value for comparison to the targets in Table 1.

I.B.1.b. May use renewable energy demonstrated through retention of RECs from the covered building owner's customer-owned retail distributed generation system that represent no more than the amount of electricity consumed by the building on an annual basis for each compliance year in Table 1 to demonstrate compliance with the performance target.

I.B.1.c. The owner of a covered building who does not own the RECs from their customer-owned retail distributed generation system or from retail distributed generation where the interconnection request was filed with the utility company prior to December 31, 2023, may purchase RECs associated with other renewable energy resources located in Colorado to demonstrate compliance with Section I.B. if the following conditions are met.

I.B.1.c.(i) The covered building owner owns the RECs and retires them in the year generated;

I.B.1.c.(ii) The customer-owned retail distributed generation system or retail distributed generation is located in Colorado, either onsite or offsite of the covered building; and

I.B.1.c.(iii) The covered building owner submits to the CEO an energy audit for the building completed by an approved energy auditor as specified in Sections II.C.1. through II.C.4. The CEO may request that the covered building owner provide additional information demonstrating that the building owner has analyzed energy efficiency and electrification options, will employ those to the extent feasible, and renewable electric generation is the only way to make up any remaining gap to comply with the greenhouse gas intensity reduction target.

I.B.1.c.(iv) Once the covered building owner has submitted the energy audit and demonstrates that a building owner has exhausted cost-effective energy efficiency and electrification measures for the covered building, the building owner may use renewable energy that represents no more than the amount of electricity produced by the customer-owned retail distributed generation system or retail distributed generation and consumed by the covered building on an annual basis for each compliance year in Table 1.

I.B.1.d. Owners of under-resourced buildings may utilize utility subscription services as a compliance mechanism subject to the following limitations.

I.B.1.d.(i) The under-resourced building owner submits to the CEO an energy audit for the building completed by an approved energy auditor as specified in Part B. Sections II.C.1. through II.C.5. The CEO may request that the building owner provide additional information demonstrating that the building owner has analyzed energy efficiency and electrification options, will employ those to the extent feasible, and renewable electric generation is the only way to make up any remaining gap to comply with the GHG intensity reduction target.

I.B.1.d.(ii) Once the under-resourced building owner has submitted the energy audit and demonstrates that the under-resourced building owner has exhausted cost-effective energy efficiency and electrification measures for the covered building, the under-resourced building owner may use may use renewable energy demonstrated through retention of RECs associated with subscription services for no more than the amount needed to achieve compliance for under this section after the results and recommendations of the energy audit for the building are taken into account.

I.B.1.d.(iii) Any renewable energy resources and associated RECs retired for purposes of demonstrating compliance with this section and utilized as part of a utility subscription service are not also used for any other utility emission reduction requirement, including but not limited to Clean Energy Plan compliance.

I.B.1.e. The owner of a covered building may use alternative measures, including utility-offered programs, not identified in this subsection to demonstrate compliance with Section I.B. if the owner obtains written approval from the CEO. The owner of a covered building shall submit an application to the CEO at least six months prior to implementation of the measure. The measure can be used for compliance only if the following conditions are met.

I.B.1.e.(i) The measure achieves reduction of greenhouse gas emission in Colorado.

I.B.1.e.(ii) The greenhouse gas emission reductions are not the result of decarbonization of the electrical or natural gas utility grids.

I.B.1.e.(iii) The CEO, in consultation with the Division, approves the calculation methodology to quantify the greenhouse gas emission reductions.

I.B.2. Standard percent reduction

I.B.2.a. A covered building owner unable to achieve the site GHG-intensity target in Table 1 may comply by achieving and maintaining a standard percent reduction in their covered building's greenhouse gas intensity as compared to the covered building's 2021, or first reporting year, benchmarked baseline greenhouse gas intensity by using the ENERGY STAR Portfolio Manager Building Emissions Calculator and applying the applicable Colorado-specific emission factor for electricity to both the baseline emissions calculation and the target year emissions calculation and converting the results to greenhouse gas intensity values in kg CO2e/SF to determine the percent reduction achieved. Under this compliance pathway, the covered building must

I.B.2.a.(i) In 2026, achieve and maintain a standard percent reduction of 13% in comparison to the covered building's 2021 benchmarked baseline that has been converted to a greenhouse gas intensity value.

I.B.2.a.(ii) In 2030, achieve and maintain a standard percent reduction of 29% in comparison to the covered building's 2021 benchmarked baseline that has been converted to a greenhouse gas intensity value.

I.B.2.a.(iii) Comply with the requirements of Sections I.B.1.b. or I.B.1.c., if applicable.

I.B.2.a.(iv) Demonstrate that the covered building has met the applicable standard percent reduction using the ENERGY STAR Portfolio Manager Building Emissions Calculator as specified in Sections I.B.1.a.(i) through I.B.1.a.(iii).

Table 1 – Property Type Site EUI and GHG Intensity Targets

Property Type	2026-2029 Site EUI (kBtu/SF)	2030-2050 Site EUI (kBtu/SF)	2026-2029 GHG Intensity (kg CO2e/SF)	2030-2050 GHG Intensity (kg CO2e/SF)
Adult Education	53.1	42.6	3.3	1.9
Ambulatory Surgical Center	79.2	42.6	4.9	2.8
Aquarium	98.3	63.5	6.1	3.5
Automobile Dealership	55.8	78.8	3.5	2.0
Bank Branch	83.0	44.7	5.1	3.0
Bar/Nightclub	113.0	66.6	7.0	4.0
Barracks	52.8	90.6	3.3	2.0
Bowling Alley	114.5	44.9	7.1	3.6
Casino	74.6	81.5	4.6	2.5
College/University	74.1	58.3	4.6	2.6
Convenience Store with Gas Station	205.9	165.1	12.8	7.4
Convenience Store without Gas Station	237.5	190.5	14.7	8.5
Convention Center	43.0	34.5	2.7	1.5
Courthouse	66.8	53.6	4.1	2.4
Distribution Center	38.5	30.9	2.4	1.4
Enclosed Mall	59.5	47.7	3.7	2.1
Fast Food Restaurant	406.1	325.8	25.2	14.5
Financial Office	57.2	46.9	3.5	2.1
Fire Station	59.5	47.7	3.7	2.1
Fitness Center/Health Club/Gym	114.5	81.5	7.1	3.6

Table 1 – Property Type Site EUI and GHG Intensity Targets				
Property Type	**2026-2029 Site EUI (kBtu/SF)**	**2030-2050 Site EUI (kBtu/SF)**	**2026-2029 GHG Intensity (kg CO2e/SF)**	**2030-2050 GHG Intensity (kg CO2e/SF)**
Food Sales	202.6	162.5	12.6	7.3
Food Service	244.3	195.9	15.2	8.7
Hospital (General Medical & Surgical)	217.6	172.0	13.5	7.7
Hotel	64.3	54.3	4.0	2.4
Ice/Curling Rink	114.5	81.5	7.1	3.6
Indoor Arena	74.6	56.2	4.6	2.5
K-12 School	56.9	49.1	3.5	2.2
Laboratory	200.7	161.0	12.5	7.2
Library	69.0	55.3	4.3	2.5
Lifestyle Center	59.8	39.0	3.7	1.7
Mailing Center/Post Office	60.6	48.6	3.8	2.2
Medical Office	76.7	64.9	4.8	2.9
Movie Theater	74.6	56.2	4.6	2.5
Multifamily Housing	50.6	42.1	3.1	1.9
Museum	74.6	56.2	4.6	2.5
Non-Refrigerated Warehouse	38.0	27.5	2.4	1.2
Office	57.2	46.9	3.5	2.1
Other	70.3	55.0	4.4	2.5
Other - Education	53.1	42.6	3.3	1.9
Other - Entertainment/Public Assembly	98.3	78.8	6.1	3.5
Other - Lodging/Residential	66.9	53.7	4.2	2.4
Other - Mall	78.7	63.1	4.9	2.8
Other - Public Services	45.1	36.2	2.8	1.6

Table 1 – Property Type Site EUI and GHG Intensity Targets				
Property Type	**2026-2029 Site EUI (kBtu/SF)**	**2030-2050 Site EUI (kBtu/SF)**	**2026-2029 GHG Intensity (kg CO2e/SF)**	**2030-2050 GHG Intensity (kg CO2e/SF)**
Other - Recreation	114.5	81.5	7.1	3.6
Other - Restaurant/Bar	253.2	203.1	15.7	9.1
Other - Services	45.1	36.2	2.8	1.6
Other - Specialty Hospital	217.6	172.0	13.5	7.7
Other - Stadium	74.6	56.2	4.6	2.5
Other - Technology/Science	70.3	55.0	4.4	2.5
Outpatient Rehabilitation/Physical Therapy	79.2	63.5	4.9	2.8
Performing Arts	74.6	56.2	4.6	2.5
Personal Services (Health/Beauty, Dry Cleaning, etc.)	45.1	36.2	2.8	1.6
Police Station	59.5	47.7	3.7	2.1
Pre-school/Daycare	50.8	40.7	3.1	1.8
Prison/Incarceration	108.3	86.9	6.7	3.9
Race Track	74.6	56.2	4.6	2.5
Refrigerated Warehouse	83.3	66.8	5.2	3.0
Repair Services (Vehicle, Shoe, Locksmith, etc.)	45.1	36.2	2.8	1.6
Residence Hall/Dormitory	52.8	44.9	3.3	2.0
Residential Care Facility	68.0	57.7	4.2	2.6
Restaurant	253.2	203.1	15.7	9.1
Retail Store	57.3	41.5	3.6	1.9
Roller Rink	114.5	81.5	7.1	3.6
Self-Storage Facility	10.9	7.7	0.7	0.3
Senior Living Community	68.0	57.7	4.2	2.6

Table 1 – Property Type Site EUI and GHG Intensity Targets				
Property Type	**2026-2029 Site EUI (kBtu/SF)**	**2030-2050 Site EUI (kBtu/SF)**	**2026-2029 GHG Intensity (kg CO2e/SF)**	**2030-2050 GHG Intensity (kg CO2e/SF)**
Social/Meeting Hall	43.0	34.5	2.7	1.5
Stadium (Closed)	74.6	56.2	4.6	2.5
Stadium (Open)	74.6	56.2	4.6	2.5
Strip Mall	59.8	39.0	3.7	1.7
Supermarket/Grocery Store	158.3	140.0	9.8	6.2
Swimming Pool	114.5	81.5	7.1	3.6
Transportation Terminal/Station	98.3	78.8	6.1	3.5
Urgent Care/Clinic/Other Outpatient	76.7	64.9	4.8	2.9
Veterinary Office	76.7	64.9	4.8	2.9
Vocational School	53.1	42.6	3.3	1.9
Wholesale Club/Supercenter	57.3	41.5	3.6	1.9
Worship Facility	41.7	38.4	2.6	1.7
Zoo	98.3	78.8	6.1	3.5

I.C. Upon a complete submission of the information described in Section I.C.3., the CEO will assign data centers a power usage effectiveness (PUE) target based on

I.C.1. The data center's total facility energy usage, including all data center hardware, power delivery components, cooling systems, and lighting systems;

I.C.2. Information technology (IT) equipment energy usage for the data center, including the energy used to power the storage and networking equipment and control equipment such as monitors and workstations; and

I.C.3. An energy audit of the data center conducted by a qualified energy auditor demonstrating feasible options to reduce the data center's PUE including, but not limited to, improving cooling systems, replacing inefficient hardware, using energy efficient lighting, optimizing redundant power supplies, using virtualization techniques (e.g., virtual servers), and installing battery storage instead of emergency generators for short term power outages.

I.C.3.a. The energy audit may be created using the U.S. Department of Energy's Audit Template Tool or a similar CEO-approved program equivalent to an ASHRAE Level 2 energy audit and must include a report describing the results and recommendations of the audit.

I.C.3.b. Energy auditors must have an in-depth knowledge of data center operations and energy efficiency measures and may be certified by the Association of Energy Engineers (AEE), ASHRAE, the Energy Management Association, the Building Performance Institute, or similar CEO-approved certifying entity.

I.C.3.c. Energy auditors must certify that the results of the energy audit are accurate and complete.

I.C.4. To request a building specific target, the owner of the covered building must submit the information in Section I.C.3. to the CEO on a CEO-approved form by December 31, 2025, for the 2026 target and December 31, 2029, for the 2030 target.

I.D. Mixed use buildings, marijuana cultivation facilities, and covered buildings with installed electric vehicle (EV) charging stations that are not able to be sub-metered will default to the standard percent reduction compliance pathway in Part C, Sections I.A.3. or I.B.2. If these buildings do not choose to comply with the standard percent reduction compliance pathway in Part C, Sections I.A.3. or I.B.2., they may request an individualized target.

I.D.1. Mixed use buildings will be assigned an individualized blended target based on building specific criteria including, but not limited to, the gross floor area for each property type for that building; total energy consumption; sub-metered energy consumption; and data center or server closet size, if applicable.

I.D.2. Covered buildings with installed electric vehicle (EV) charging stations that are not able to be sub-metered will be assigned an individualized target based on the energy usage of the covered building excluding the installed EV charging station(s) energy usage.

I.D.3. Marijuana cultivation facilities will be assigned a target based on the facility's total gross floor area and energy usage, including climate control, lighting, and irrigation systems.

I.D.4. To request an individualized target, the owner of the covered building must submit the following to the CEO on a CEO-approved form by December 31, 2025, for the 2026 target and December 31, 2029, for the 2030 target.

I.D.4.a. The covered building's 2021 and each subsequent year of benchmarking data. New covered buildings for which a 2021 baseline does not exist must provide the benchmarking data submitted for the first full calendar year of building data.

I.D.4.b. Mixed use buildings must submit documentation of the gross floor area for each property type for that building; total energy consumption; sub-metered energy consumption; data center or server closet size, if applicable; and other criteria listed on the CEO-approved form.

I.D.4.c. Covered buildings with EV charging stations that are not sub-metered must submit documentation of the specific energy usage of the EV charging stations.

I.D.4.d. Marijuana cultivation facilities must submit documentation of the facility's total gross floor area and energy usage, including climate control, lighting, and irrigation systems; and other criteria listed on the CEO-approved form.

I.E. Owners of covered buildings that seek to challenge an individualized target assigned by the CEO pursuant to Sections I.C. or I.D. must apply for a target adjustment pursuant to Sections II.B. and II.C. Data centers applying for a building specific target adjustment need not perform a second energy audit as required in Part C, Section II.C.

II. Compliance pathway adjustments

II.A. Adjusted Timeline

Covered building owners may request an adjustment to the timeline to achieve the 2026 and/or 2030 building performance standards pursuant to Part C, Section I. The request must be submitted on a CEO approved form. To apply for a timeline adjustment a covered building owner must

II.A.1. Submit an application to the CEO requesting an adjusted timeline, including

II.A.1.a. The specific adjusted timeline needed.

II.A.1.b. Documentation of the need for the adjusted timeline.

II.A.1.c. The covered building owner's plan to achieve the performance targets within the adjusted timeline.

II.A.1.d. An inventory of the natural gas equipment in the building including the age of the equipment and the energy savings associated with electrification of the equipment, if applicable.

II.A.1.e. Purchase orders for necessary equipment demonstrating purchase and delivery dates, and any additional documentation demonstrating supply chain delays specific to that equipment, if applicable.

II.A.1.f. Documentation demonstrating collaboration with the building's utility(ies) related to updating the electrical distribution infrastructure, if applicable.

II.A.2. Covered building owners applying for an adjusted timeline must submit their application to the CEO by December 31, 2025, for the 2026 target and by December 31, 2029, for the 2030 target.

II.A.3. Covered building owners that may apply for this type of adjustment include, but are not limited to

II.A.3.a. Affordable housing and under-resourced buildings.

II.A.3.a.(i) Owners of covered buildings that do not fall into one of the categories in the definition of under-resourced buildings in Part A, Section III.WW. may petition the CEO for status as an under-resourced building by submitting on a CEO-approved form a description of the building; an explanation of why the building should be considered under-resourced; and evidence that the building has less access to resources than other similarly situated buildings in the relevant utility service territory.

II.A.3.b. Buildings undergoing a major renovation that does not align with the target dates but that will achieve the site EUI or greenhouse gas target.

II.A.3.c. Building owners experiencing significant supply chain or workforce delays.

II.A.3.d. Building owners who can demonstrate a plan to replace building heating and cooling systems at end of life where the system end of life occurs after the compliance period.

II.A.3.e. Building owners experiencing financial hardship, as defined in Part A, Section III.X.

II.A.3.f. Inherent and unique characteristics of the physical building that prohibit them from reaching the timeline.

II.A.3.g. Buildings that require updates to the electrical distribution infrastructure that cannot be timely completed to meet the performance standard deadline.

II.A.3.h. Building owners that purchase a covered building within the 12 month period before a required building performance standard deadline. Building performance standard deadline is December 31, 2026, for the 2026 target and December 31, 2030, for the 2030 target.

II.B. Standard Performance Target Adjustments

Covered building owners who have selected the EUI or GHG compliance pathway may request a standard adjusted 2026 and/or 2030 performance target. The request must be submitted on a CEO approved form.

II.B.1. As part of the standard performance target adjustment, buildings with multiple property types will be assigned a standard blended target based on the percentage of gross floor area assigned to each property type for that building. The CEO will also consider other standard adjustments as suggested by EPA, Department of Energy, or other nationally recognized entities.

II.B.2. The request must be submitted on a CEO approved form. To apply for an adjusted target a covered building owner must submit

II.B.2.a. Each year of the benchmarking data from 2021 up to the request year (e.g., for a January 1, 2025, request submit 2021-2024 data). New covered buildings for which a 2021 baseline does not exist must provide each year of benchmarking data starting with and following the year the owner receives a certificate of occupancy for the building. The covered building must also submit a third-party data verification checklist for each year of benchmarking data.

II.B.2.b. A list of property types at the covered building and the associated square footage for each property type.

II.B.2.c. Third-party data verification.

II.B.3. The CEO may request other information from the covered building owner in order to generate a standard performance adjustment target.

II.C. Adjusted Performance Target for Under-Resourced Buildings

Owners of under-resourced buildings may request an adjusted 2026 and/or 2030 performance target. The request must be submitted on a CEO approved form. To apply for an adjusted target the owner of an under-resourced building must

II.C.1. Submit an application to the CEO requesting an adjusted target, including

II.C.1.a. Each year of the benchmarking data from 2021 up to the request year (e.g., for a January 1, 2025, request submit 2021-2024 data). New covered buildings for which a 2021 baseline does not exist must provide each year of benchmarking data starting with and following the year the owner receives a certificate of occupancy for the building. The covered building must also submit a third-party data verification checklist for each year of benchmarking data.

II.C.1.b. Narrative detailing the building characteristics (e.g., year of construction, state or federal historical status, etc.) or functional variations that qualify for an adjustment.

II.C.1.c. An inventory of the natural gas equipment in the building including the age of the equipment and the electrification feasibility of the equipment.

II.C.1.d. Documentation of operation and maintenance improvements including how the building owner will implement long-term payback measures in the building.

II.C.1.e. Documentation demonstrating collaboration with the building's utility or utilities to determine the feasibility of gas and electric beneficial electrification and/or gas or electric demand side management programs.

II.C.2. Covered building owners applying for an adjusted target must submit their application to the CEO by December 31, 2025, for the 2026 target and by December 31, 2029, for the 2030 target.

II.C.3. Covered building owners that may apply for this type of adjustment include, but are not limited to

II.C.3.a. Covered buildings with inherent and unique characteristics of the physical building that make the weather normalized site EUI target unachievable or cost prohibitive.

II.C.3.b. Affordable housing and under-resourced buildings.

II.C.3.b.(i) Owners of covered buildings that do not fall into one of the categories in the definition of under-resourced buildings in Part A, Section III.WW. may petition the CEO for status as an under-resourced building by submitting on a CEO-approved form a description of the building; an explanation of why the building should be considered under-resourced; and evidence that the building has less access to resources than other similarly situated buildings in the relevant utility service territory.

II.D. Owners of covered buildings applying for a compliance adjustment to a building's target or timeline pursuant to Part C, Section II.A. must also submit to the CEO an energy audit for the building completed by an approved energy auditor.

II.D.1. The building owner must submit an energy audit created using the U.S. Department of Energy's Audit Template Tool or similar CEO-approved program, equivalent to an ASHRAE Level 2 energy audit, and a report describing the results and recommendations of the audit.

II.D.2. The audit report must include the achievable weather-normalized site EUI for the building, based on the results and recommendations of the audit.

II.D.3. Energy auditors must be certified by the Association of Energy Engineers (AEE), ASHRAE, the Energy Management Association, the Building Performance Institute, or similar CEO-approved certifying entity.

II.D.4. Energy auditors must certify that the results of the energy audit are accurate and complete.

II.D.5. The energy audit may be in the form of a strategic energy management plan for covered buildings that are part of a campus.

II.E. In addition to target adjustment application materials submitted by an owner of a covered building, the CEO will also consider the appropriateness of a standard adjustment as suggested by EPA.

II.F. Owners of covered buildings that will demonstrate compliance with the building performance standards through a compliance pathway other than the selected compliance pathway, as specified pursuant to Part B, Section I.A., may request an adjustment from the CEO. The covered building owner must provide the materials required in Part B, Sections II.B. and II.C. and demonstrate that the building owner has achieved compliance through the other compliance pathway. The request must be submitted to the CEO on a CEO-approved form by January 31, 2027 (for the 2026 target) and January 31, 2031 (for the 2030 target).

II.G. If a covered building owner's adjustment request is denied by the CEO, the building owner may request the CEO executive director (or their designee) to review the determination. The building owner must request the review within ninety (90) days of the initial denial. The executive director (or their designee) will make a recommendation on the adjustment request within 120 days of the review request.

III. A covered building owner that fails to meet the building performance standards through one of the compliance pathways in Section I. in the timeframe(s) specified or under an approved adjustment pursuant to Section II. must meet the building performance standards as expeditiously as practicable.

III.A. Failure to timely comply with a performance standard under Part C will constitute a violation of these rules.

III.B. Until compliance is achieved, on the last day of every month after a covered building owner fails to meet the building performance standards by the date(s) specified in Section I., the building owner must either demonstrate compliance with the building performance standards or demonstrate progress towards meeting the building performance standards.

III.B.1. Initial reporting under Section III.A. must include documentation demonstrating the building owner's retrofit plan including an outline of proposed improvements, the timeframe in which improvements will be made, and how the improvements will result in the building reaching the applicable target of the chosen compliance pathway. The retrofit plan must include at least two contractor project cost estimates.

III.B.2. Subsequent monthly reports must include a description of any work completed under the retrofit plan and documentation that plan milestones have been met.

III.B.3. This demonstration must be provided to the CEO until the covered building owner demonstrates compliance with the building performance standards or until a new building performance standard becomes applicable, at which time the covered building owner must meet the new building performance standard.

III.C. Each month that a covered building owner fails to demonstrate compliance with the building performance standards or demonstrate progress towards meeting the building performance standards, as set forth in Section III.A., constitutes an independent violation and may subject the covered building owner to additional civil penalties under 25-7-122, C.R.S. (2022), beyond the penalties specified in Part E. and, in addition to civil penalties, a requirement to perform one or more projects to mitigate violations related to excess emissions of greenhouse gas emissions. Covered building owners in violation of this Section III. may also be subject to injunctive relief under § 25-7-121, C.R.S. (2022).

PART D Recordkeeping

I. Covered building owners must maintain the following records for a period of seven (7) years and make records available to the Division or CEO upon request.

I.A. ENERGY STAR Portfolio Manager account data in Part B, Section I.

I.B. Evidence of requests the covered building owner has made to obtain tenant energy use data from any separately metered spaces in Part B, Section II.

I.C. Any additional information pertaining to the building's energy data and space use entered into ENERGY STAR Portfolio Manager in Part B, Section I.

I.D. Demonstration of compliance with the chosen compliance pathway(s) in Part C, Section I. for a covered building, including results from the ENERGY STAR Portfolio Manager Building Emissions Calculator in spreadsheet (.xlsx) files downloaded from the calculator, if applicable.

I.E. Any waiver or adjustment submissions in regard to compliance or non-compliance in Part B, Section II. and Part C, Section II.

I.F. Records of any upgrades made to comply with the building performance standards requirements (e.g., receipts, invoices).

I.G. Any other information included in the building performance standards requirements.

II. Change of ownership

II.A. The owner of a covered building must disclose to a prospective buyer prior to the sale of the building the covered building's compliance status, including compliance with performance targets; any approved waivers, exemptions, extensions, or adjustments; and any penalties assessed.

II.B. The owner of a covered building must provide all records specified in Part D, Section I. to the new building owner upon closing.

PART E Penalties

I. Beginning January 1, 2024, a covered building owner who does not submit a benchmarking report in accordance with Part B, Section I. or meet the building sale or lease requirements in 25-7-142(6), C.R.S. (2022), is subject to a civil penalty of up to $500 for a first violation and up to $2,000 for each subsequent violation.

II. Beginning January 1, 2024, a covered building owner whose building fails to meet the building performance standards in Part C is subject to a civil penalty of up to $2,000 for a first violation and up to $5,000 for each subsequent violation.

III. Public building owners are not subject to civil penalties under this Part E or under 25-7-122.

PART F Statements of Basis, Specific Statutory Authority and Purpose

I. Adopted: August 17, 2023

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act § 24-4-103, the Colorado Air Pollution Prevention and Control Act §§ 25-7-110 and 25-7-110.5, and the Air Quality Control Commission's (Commission) Procedural Rules.

Basis

The Commission adopted a new Regulation Number 28, Building Benchmarking and Performance Standards, to satisfy the requirements the General Assembly in House Bill 21-1286 (Concerning Measures to Improve Energy Efficiency) (HB 21-1286), set forth in § 25-7-142, C.R.S., directing the Commission's adoption of building benchmarking and performance standards for covered buildings by September 1, 2023.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act § 25-7-142(7) authorizes the Commission to promulgate rules to implement the benchmarking program established in HB 21-1286. § 25-7-142(8)(c) directs the Commission to adopt rules to establish building performance standards on or before September 1, 2023, "that will achieve a reduction in greenhouse gas emissions of [7%] by 2026 as compared to 2021 levels" and "a reduction in greenhouse gas emissions of [20%] by 2030 as compared to 2021 levels," as set forth in § 25-7-142(8). § 25-7-105(1)(e) authorizes the Commission to promulgate implementing rules and regulations to abate greenhouse gas (GHG) emissions consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g). In adopting GHG abatement strategies and implementing rules, the Commission is authorized to take into account other relevant laws and rules to enhance efficiency and cost-effectiveness and solicit input from other state agencies and stakeholders on the advantages of different statewide GHG pollution mitigation measures, see §§ 25-7-105(1)(e)(II) and (IV). Implementing rules may include regulatory strategies that incentivize development of renewable resources and "enhance cost-effectiveness, compliance flexibility, and transparency around compliance costs," see § 25-7-105(1)(e)(V). Further, in promulgating such implementing rules, the Commission is to consider many factors, including, but not limited to, health, environmental, and air quality benefits and costs; the relative contribution of each source or source category to statewide GHG pollution; equitable distribution of the benefits of compliance; issues related to the beneficial use of electricity to reduce GHG emissions; and whether greater or more cost-effective emission reductions are available through program design, see § 25-7-105(1)(e)(VI).

§ 25-7-109(1) authorizes the Commission to adopt and promulgate emission control regulations that require the use of effective practical air pollution controls for each type of facility, process, or activity which produces or might produce significant emissions of air pollutants. An "emission control regulation" may include "any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity. . . .", see § 25-7-103(11). Emission control regulations may pertain to any chemical compound including GHG pollution, see § 25-7-109(2)(c).

§§ 24-38.5-112(1) and 24-38.5-112(1)(a) require the Colorado Energy Office (CEO) to implement a building performance program and to use “county assessor records and other available sources of information” to administer the building performance program. § 24-38.5-112(1)(a)(I)-(IV) requires CEO to create a database of covered buildings and of owners required to comply with the building performance program; track compliance with the building performance program; maintain a list of noncompliant owners; and provide the Division a list of noncompliant owners for the Division's enforcement of the building performance program pursuant to § 25-7-122(1)(i). The building benchmarking and performance standards rule was collaboratively drafted by the Division and CEO before it was brought before the Commission. CEO is responsible for the implementation and continuation of the building benchmarking and performance standards requirements while the Division is responsible for enforcement of the rule.

Purpose

The Commission established building benchmarking and building performance standards (BPS) as one means to track and reduce greenhouse gas (GHG) emissions in the built environment from a 2021 baseline. Buildings constructed after 2021 that would be considered covered buildings under this regulation will also be required to meet the building benchmarking and performance standards. To demonstrate compliance with the BPS, the Commission adopted a flexible, compliance pathway based approach to reducing emissions through improvements in energy efficiency, high-efficiency electrification of space heating and cooling and water heating, or a combined approach that may also include the installation of customer-owned retail distributed generation systems. In adopting the BPS, the Commission considered the recommendations of the Building Energy Performance Task Force (BPS Task Force) convened by the Colorado Energy Office (CEO), as directed by HB 21-1286. Pursuant to § 25-7-142(8)(c)(II), the Commission is, by rule, adopting performance standards that meet the requisite GHG emission reductions.

Applicability

New Buildings

Buildings constructed after 2021 that would be considered covered buildings under this regulation will also be required to meet the building benchmarking and performance standards. Buildings constructed after 2021 must start collecting benchmarking data once the owner has received a certificate of occupancy for the building. A new building must comply with its applicable building performance target by the specified target date.

Public Buildings

Public buildings become subject to the building performance standards of this regulation only after undertaking a construction or renovation project that has an estimated cost of at least $500,000 and impacts at least twenty-five percent of the covered building’s square footage. A construction or renovation project that will trigger compliance with the building performance standards either (1) impacts a square footage of twenty-five percent or greater or (2) impacts an area of that size or greater through changes to heating and cooling systems, insulative measures, changes to the building envelope, or other such measures. For purposes of this rule, the “project” shall be the aggregation of any construction or renovation work on a public building that is part of the same bidding process, happens contemporaneously or sequentially within an eighteen month period, or that would otherwise be reasonably considered to be part of or substantially related to the same project.

Public buildings constructed after 2021 that would be considered covered buildings under this regulation will also be required to meet the building benchmarking and performance standards. Public buildings constructed after 2021 must start collecting benchmarking data once the owner has received a certificate of occupancy for the building. Public buildings constructed after 2021 must comply with the building performance standards requirements if the construction has an estimated cost of at least $500,000.

In situations where a public entity shares its building space with other non-public entities, the owner of the covered building, whether the public entity or not, is still required to report benchmarking data. In multi-owner situations, the party responsible for compliance will be the owner listed in the tax assessor's records for that building and must comply with building performance standards if the covered building has a shared, centralized heating and/or cooling system. If a public entity leases a covered building or a portion of a covered building, the building owner is responsible for compliance with the benchmarking and building performance standards. Whether the public entity may also have some responsibility related to compliance will depend on the lease arrangement between the public entity and the building owner, as with any other owner-tenant situation.

Condominiums and Townhomes

§ 25-7-142(2)(j)(II)(C) states that "a single-family home, duplex, or triplex" is not a covered building under the building benchmarking and performance standards. Properties such as townhomes and condominiums are similar to single-family homes, duplexes, or triplexes in that the condominium or townhome units within the envelope of a building are individually owned units and may have their own heating and cooling systems. However, condominium or townhome buildings differ from a single-family home in both the energy usage and, thus, the potential opportunity to reduce energy use and associated building greenhouse gas emissions when the condominiums or townhomes share a centralized heating and/or cooling system. Therefore, the Commission determined that condominiums or townhomes that share a building or together comprise a building, are covered under the building benchmarking and performance standards if they have shared centralized heating and cooling systems for water or air conditioning throughout the units of the building. The party responsible for compliance for covered buildings composed of condominiums or townhomes, or any covered building with split ownership, will be the owner listed in the tax assessor's records for that building whether it be a person, group, organization, or business. Where tax records do not clearly identify a single owner, the person holding themselves out to be the owner or responsible party may be identified through other means.

Federal Buildings

The Commission has determined that federal buildings are subject to and must comply with the Benchmarking and Reporting Requirements in Part B of this rule.

The Commission recognizes that there is currently a Federal Building Performance Standard that establishes 2030 and 2045 goals for reducing emissions from federal buildings. As long as the Federal Building Performance Standard is in effect, federal buildings that would be covered by the Colorado Building Performance should instead comply with the requirements of the Federal Performance Standard. However, the Commission reserves the right to regulate federal buildings in the event that the Federal Building Performance Standard is modified or eliminated."

Benchmarking

In Part B, the Commission adopted requirements for owners of covered buildings to submit energy-use benchmarking data. Using benchmarking data to create baseline energy usage allows building owners to track and measure their energy usage in relation to prior years and progress towards performance standard targets established in Part C.

Annual Reporting

§ 25-7-142(3) requires owners of covered buildings to annually submit, starting June 1, 2024, and by June 1 of each year thereafter, benchmarking data for the previous calendar year to CEO. Buildings constructed after 2021 will be required to submit benchmarking reports starting with the first full year of data after the building has started operating. This data must include all of the applicable building data required by the rule and data quality checks to ensure that the data is correct and accurate. Building owners must also include any change in building information in the annual reporting such as changes to property type or building ownership. Certain building owners may be allowed to benchmark their buildings as a campus if they meet the requirements for campus reporting in Part B. Covered building owners must include in the 2027 benchmarking data report a demonstration that the covered building met the 2026 building performance standard requirements as provided in Part C; the same applies to 2031 reporting with respect to the 2030 building performance standard requirements.

Currently, there is no option in the ENERGY STAR® Portfolio Manager for a building to select “marijuana cultivation facility” in the building type field when reporting benchmarking data. CEO has never exempted marijuana cultivation facilities from any reporting requirements. Denver has recently made changes to its program and directed marijuana cultivation facilities to select “manufacturing” in ENERGY STAR® Portfolio Manager when reporting benchmarking data. Consistent with Denver’s program, Regulation Number 28 specifies that marijuana cultivation facilities must report their property type as “manufacturing” in ENERGY STAR® Portfolio Manager and that marijuana cultivation facilities that are covered buildings will be assigned an individualized target for purposes of complying with the building performance standards should the facility owner choose not to comply with the standard percent reduction compliance pathway. To avoid confusion, the definition of “manufacturing purpose” explicitly excludes these facilities for the purpose of the exemption from the definition of “covered building” in Section III.O.2.

Waivers, Extensions, and Exemptions

§ 25-7-142(5) allows covered building owners to seek a waiver or time extension from the annual benchmarking requirement for a given year if the owner submits waiver documentation to, and receives approval from, CEO. Building owners eligible for the 2021 benchmarking waiver will automatically be assigned an energy-use intensity (EUI) target. A covered building owner may also request a benchmarking time extension from CEO if the owner submits documentation to CEO demonstrating that, despite the owner's good-faith efforts, the owner was unable to complete the benchmarking report for the relevant year. This allows the building owner more time to aggregate their building’s benchmarking data so they can submit at a later date. Covered building owners must submit a waiver application to CEO any time after June 1 of the calendar year to be benchmarked and on or before May 1 of the reporting year, unless CEO adopts an alternate timeline for submitting a waiver application.

The Commission also adopted provisions for building owners to seek an exemption from CEO if the building does not meet the definition in § 25-7-142(2)(j) of a covered building (i.e., storage facilities, stand-alone parking garages, or airplane hangars that lack heating and cooling; buildings with more than half of the gross floor area used for manufacturing, industrial, or agricultural purposes). The adoption of these exemption provisions recognize that building uses may change over time and that building owners may want documented clarity of whether or not the building is subject to the benchmarking requirements.

<u>Building Performance Standards (BPS)</u>

Building performance standards create energy performance targets, such as a specific level of energy usage or reduction for buildings to meet after a set amount of time. These standards help drive energy efficiency improvements and reduce energy use and resulting GHG emissions over the course of implementation.

BPS Task Force Recommendations

Pursuant to § 25-7-142(8)(a), CEO convened the BPS Task Force to develop recommendations for the Commission to consider when adopting rules for building performance. CEO timely delivered the BPS Task Force recommendations to the Governor's Office, General Assembly, and Colorado Department of Public Health and Environment by October 1, 2022, consistent with § 25-7-142(8). The recommendations made by the BPS Task Force, and included in the report, were approved by two-thirds of the BPS Task Force members. These recommendations are available on the Colorado Energy Office's (CEO) Building Performance Standards website under the Task Force Recommendations.

In developing the recommendations, the BPS Task Force was comprised of members with experience from a broad range of industries and building owners; examined building types of unique energy needs including aviation facilities, nursing homes, and hospitals; and considered how the performance standards and the greenhouse gas reductions would not include savings from statewide decarbonization of electricity or natural gas utility grids but include savings from utilities' or local governments' energy efficiency programs.

The BPS Task Force also made recommendations related to workforce availability and development related to building energy performance; financial and nonfinancial costs and benefits of upgraded building energy performance; availability of programs, technical assistance, and incentives to support building owners, utilities, and local governments; opportunities to improve commercial building energy use in Colorado; how regulations and agency support could help ensure building owners avoid fines through compliance with performance standards.

Rule Design and GHG Emissions Reductions

Enacting a building performance regulation to reduce GHG emissions ensures that large building owners participate in the reduction of emissions from the built environment. Building energy usage and GHG emissions are correlative, which allows for building performance standards to influence consumer decisions and therefore induce reductions of statewide building emissions. The Commission adopted building performance standards that will require covered buildings to implement measures that, taken together, are expected to achieve GHG emission reductions from this segment of covered buildings in the building sector of 7% by 2026 and 20% by 2030, as compared to 2021 levels. Based on benchmarking data reporting 2021 data in 2022, covered buildings subject to these rules were responsible for approximately 8,878,000 metric tons of carbon dioxide equivalent emissions resulting from the energy consumption of those buildings.

Pursuant to § 25-7-142(8)(c)(II), the Commission adopted performance standards to meet the requisite GHG emission reductions. In calculating the statewide GHG emission reductions anticipated to result from these regulations, the changes in emissions are not separate from those realized by the utilities as part of the statewide GHG inventory. This overlap in emissions impacts is recognized in § 25-7-142(8)(a)(IV), which directs that "[i]n calculating greenhouse gas reductions pursuant to § 25-7-42(8), the calculation must not include savings from statewide decarbonization of electricity or natural gas utility grids, but may include savings from utilities' or local governments' energy efficiency programs." Thus, while these rules are anticipated to drive GHG emission reductions to meet the targets, it is important to note that these reductions will not be independently reflected in the statewide GHG inventory but rather as one means of reducing emissions attributable to energy consumption by driving down demand and consumption of carbon-intense energy sources. It is also important to note that the greenhouse gas targets from § 25-7-142(8)(a)(II)(A) and § 25-7-142(8)(a)(II)(B) must be adjusted to account for the addition of future building stock. Factoring the increase of new building stock into the greenhouse gas emissions targets means that the initial targets would need to be increased from 7% by 2026 and 20% by 2030 to 9.6% by 2026 and 23% by 2030.

Accordingly, the compliance pathways provided for in Part C are designed to provide owners of covered buildings flexibility in compliance based on the unique characteristics of each individual building while also ensuring that overall compliance will accomplish the GHG emissions reduction targets in § 25-7-142(8)(a)(II)(A) and § 25-7-142(8)(a)(II)(B). The building performance standard requirements adopted by the Commission allow for different metrics to be measured against a 2021 baseline so that progress can be tracked and compared to the GHG emission reduction targets. Owners of covered buildings must meet and maintain compliance with the 2026 targets each year from 2026 through 2029 until the covered buildings must meet and maintain the 2030 targets. Owners of covered buildings must meet and maintain compliance with the 2030 targets each year from 2030 on until future targets are established for beyond 2030.

Compliance Pathways

In Part C, Sections I.A. and I.B., the Commission adopted two compliance pathways for covered building owners to comply with performance standards: energy efficiency and greenhouse gas reductions. Improving energy efficiency is the preferred compliance pathway. This compliance pathway requires building owners to implement energy efficient changes or upgrades to their buildings to reduce the building's EUI to meet the building's assigned weather normalized site EUI target. Improving site EUI reduces GHG emissions by reducing demand for gas and electric service and, therefore, reducing the emissions from the generation or consumption of that energy. In Part C, Table 1, the Commission established weather normalized site EUI by property type that covered buildings are to achieve by 2026 as an interim performance standard, pursuant to § 25-7-142(8)(a)(II). The 2026 weather normalized site EUI targets in Table 1 were determined to represent a 7% reduction in GHG emissions across covered buildings as compared to the baseline, after accounting for growth of new construction, established through the 2021 benchmarking data collected and analyzed by CEO. The 2030 weather normalized site EUI targets in Table 1 were determined to represent a 20% reduction in GHG emissions across covered buildings as compared to the baseline, after accounting for growth, established through the 2021 benchmarking data collected and analyzed by CEO.

In Part C, Section I.A.3., the Commission adopted a standard percent reduction compliance pathway option to the energy efficiency compliance pathway that allows covered buildings to meet and maintain fixed EUI reductions by the 2026 and 2030 compliance periods. Buildings complying with the energy efficiency standard percent reduction compliance pathway must reduce their EUI by 13% in 2026 and by 29% by 2030 from their 2021, or first reporting year, benchmarked baseline weather-normalized EUI.

For existing buildings that did not submit a 2021 benchmarking report, the building will be subject to the weather normalized EUI target for the property type as identified in tax records that was established as the average of the data submitted by the similar building types. In calculating site EUI targets, where sufficient data for a particular building type was lacking in the 2021 benchmarking baseline, other national and local building energy data sets, such as ENERGY STAR and the Commercial Buildings Energy Consumption Survey (CBECS), were used to determine the EUI target for that property type. Under this compliance pathway, buildings constructed after 2021 must also comply with their property type EUI target. If a new building is unable to provide benchmarking data, the building will be assigned a EUI target for the property type as identified in tax records based on similar property types that benchmarked their data or from the Commercial Buildings Energy Consumption Survey (CBECS).

The demonstration of compliance with the energy efficiency compliance pathway will be completed through the ENERGY STAR® Portfolio Manager tool that will provide a building owner with a covered building's weather-normalized site EUI.

Under Part C, Section I.B., a covered building unable to achieve the required GHG emission reductions through the compliance pathway of energy efficiency may achieve the required GHG emission reductions and demonstrate compliance individually or through a combination of energy efficiency, electrification, and/or the use of customer-owned retail distributed generation systems to offset grid-based electricity. Electrification requires covered building owners to replace or avoid fossil fuel-based space heating, water heating, or cooking equipment by using high efficiency electric equipment. High efficiency electric equipment means using electrical equipment with less required energy to perform the same function by eliminating energy waste. For example, high-efficiency electric equipment may be certified according to ENERGY STAR, meet Federal Energy Management Program (FEMP) efficiency requirements, meet the current version of American Society of Heating, Refrigerating and Air-Conditioning Engineers' (ASHRAE) Standard 90.1 or IECC 2021 International Energy Conservation Code (IECC), or meet newer such requirements. Electrification also reduces emissions by shifting fossil fuel-based building end-uses to the electrical grid, which is a lower-emitting energy supply source that will achieve deeper emissions reduction as the grid is progressively supplied by greater amounts of renewable energy. The Commission encourages the building owner to coordinate and communicate with their utility provider if the building is planning on implementing full or significant electrification of the building.

In Part C, Section I.B.2., the Commission adopted a standard percent reduction compliance pathway option to the GHG intensity reduction compliance pathway that allows covered buildings to meet and maintain fixed GHG intensity reductions by the 2026 and 2030 compliance periods. Buildings complying with the GHG intensity standard percent reduction compliance pathway must reduce their GHG intensity by 13% in 2026 and by 29% by 2030 from their 2021, or first reporting year, benchmarked baseline that has been converted to a GHG intensity value. Building owner's choosing to use the GHG intensity standard percent reduction compliance pathway will calculate their building's baseline year emissions and their 2026 and/or 2030 emissions using the ENERGY STAR® Portfolio Manager's Building Emissions Calculator and apply a Colorado-specific emission factor for electricity use in the calculator for the baseline year and years 2023 to 2026 and a separate Colorado-specific emission factor for the baseline year and years 2027 and beyond, and compare the difference between the baseline year calculation and the target year calculation to determine the percent reduction. Both of these emission factors reflect the statewide decarbonization of the electricity utility grid and ensures that the building's 2021 baseline and 2026 and/or 2030 reductions reflect the same status in grid decarbonization.

Customer-owned retail distributed generation allows a building to develop renewable resources to reduce use of grid-based energy and therefore reduce some portion of the building's emissions; however, the use of renewable resources may only be used as a compliance mechanism after the covered building owner has exhausted other options. A covered building owner using distributed generation must demonstrate ownership or long-term control of the resource for covered building owners that choose the GHG intensity compliance pathway. The following forms of retail distributed generation recognized under 40-2-124(1)(a)(VIII) are eligible for compliance after demonstrating in an energy audit that a building owner has maximized the economic use of energy efficiency and electrification and exhausted cost-effective compliance measures for the covered building.

- On-site renewable energy.
- Off-site renewable energy that is located on non-contiguous property owned or leased by the covered building owner consistent with the off-site net metering program authorized by 40-2-124(1)(e)(I)(C).
- A community solar garden subscription consistent with 40-2-127(2), so long as the covered building owner has a subscription term of at least five years. A covered building owner must maintain the subscription in order to maintain compliance.

- On-site aggregated net metering distributed generation installations recognized under 40-2-124(1)(j), including master metered net metering installations and individually metered multi-unit net metering installations.

Customer-owned retail distributed generation systems, retail distributed generation, and energy procured through a power purchase agreement may be counted toward compliance if the covered building owner retains the renewable energy credits (RECs) associated with the project, or if the RECs associated with the project are retired on the covered building owner's behalf for no more than the amount of electricity produced by the customer-owned retail distributed generation system or retail distributed generation, or procured through a power purchase agreement that is consumed by the building. Legacy projects where RECs were transferred to the utility as a term of the project to decrease upfront costs may also be used for compliance if the covered building owner procures and retires RECs from another renewable energy resource located within Colorado that do not exceed the amount of energy produced by the covered building owner's legacy system and consumed by the covered building.

The Commission recognized the need for additional flexibility for under-resourced buildings and allowed the owners of under-resourced buildings to use utility subscription services as a compliance measure after the owner has exhausted cost-effective energy efficiency and electrification measures as demonstrated in an energy audit. Under-resourced building owners are the only covered building owners that may use utility subscription services as a compliance measure within the GHG intensity compliance pathway in this regulatory program.

Other forms of renewable energy may be considered in the compliance pathway in consultation with CEO. For example, using wastewater thermal energy recovery systems may result in a reduced energy usage for the building that would be reflected in the building's benchmarking data and GHG emissions but not as a REC. Similarly, a demand response or demand flexibility program may be considered as a means to reduce a covered building's overall EUI, so long as there is adequate information to demonstrate the reduction in GHG emissions. The building benchmarking and performance standards overall goal is to lower a building's greenhouse gas emissions and other forms of renewable generation or recovery can allow a building to do that by reducing reliance on other forms of emissions-generating sources for a building even if the renewable generation or recovery is not directly accounted for in the benchmarking tool. CEO will work with the Division and stakeholders when considering other programs and emerging technologies that can be used to reduce the EUI and/or greenhouse gas emissions of buildings in the future.

In order to demonstrate compliance with the GHG emissions reduction compliance pathway, building owners must use the ENERGY STAR® Portfolio Manager's Building Emissions Calculator and report the results for a covered building from the calculator. The reporting must be accomplished by downloading the results from the calculator in a spreadsheet (.xlsx) file that is submitted to CEO. If utilizing electrification to demonstrate compliance through this compliance pathway, the applicable 2023 through 2026 or 2027 and beyond Colorado-specific emission factor for electricity must be used and will be specified in the calculator. The U.S. Environmental Protection Agency (EPA) operates both ENERGY STAR® Portfolio Manager and the Building Emissions Calculator, which are currently separate tools, but these tools are able to work together. However, EPA is planning to integrate the functionality of the Building Emissions Calculator directly into ENERGY STAR® Portfolio Manager at which point calculations of a covered building's GHG emissions for demonstrating compliance with the GHG emissions reduction compliance pathway may be completed using the calculator functionality in ENERGY STAR® Portfolio Manager and its associated reporting function.

In Part C, Table 1, the Commission established greenhouse gas emission targets by property type for this compliance pathway that covered buildings must achieve by 2026 and 2030, pursuant to § 25-7-142(8)(c)(II). The 2026 greenhouse gas emission targets in Table 1 were determined to represent a 7% reduction in GHG emissions as compared to the baseline, accounting for growth, established through the 2021 benchmarking data collected and analyzed by CEO. The 2030 greenhouse gas emission targets in Table 1 were determined to represent a 20% reduction in GHG emissions as compared to the baseline, accounting for growth, established through the 2021 benchmarking data collected and analyzed by CEO.

In Part C, Sections I.C. and I.D., the Commission adopted processes for the establishment of individual targets for certain categories of covered buildings, specifically mixed use buildings as defined in Part A, Section III.DD., data centers, buildings with installed electric vehicle (EV) charging stations that are not able to be sub-metered, and marijuana cultivation facilities. At the time of rule adoption, the Commission did not have data available to establish property type targets for these buildings in Table 1 that would enable compliance with energy efficiency of greenhouse gas intensity reduction pathways. Mixed use buildings may identify a primary property type in ENERGY STAR® Portfolio Manager where one property type accounts for more than 50% of the building's gross floor area. However, due to the variety of potential energy needs of the different property types represented in the building, CEO will assign an individualized target to every mixed use building as defined in Part A, Section III.DD. that does not use the standard percent reduction compliance pathway. The individualized target will be based on the percentage of gross floor area assigned to each property type in the building and other factors detailed in Part C, Section I.D. CEO will use each building's ENERGY STAR® Portfolio Manager benchmarking report to track compliance with these individualized targets.

Data centers will be assigned a power usage effectiveness (PUE) target, due to the unique energy needs of such buildings. CEO will only assign stand-alone data centers a PUE target, as outlined in Part C, Section I.C. Mixed use buildings that include a data center will be assigned an individualized target pursuant to Part C, Section I.D. Buildings with EV charging stations that are not able to be sub-metered will be assigned a target representative of the building's energy use minus the EV charging station energy use. EPA is planning to add functionality to ENERGY STAR® Portfolio Manager for building owners to exclude the energy use of EV charging stations, which would allow both a recalculation of the building's 2021 baseline and future reporting to exclude EV charging station energy use via reporting rather than through the individualized target process. Electricity used for EV charging, regardless of whether it is sub-metered, is intended to be excluded from energy use by covered buildings under this program. Lastly, as discussed above, marijuana cultivation facilities will select the property type of manufacturing in ENERGY STAR® Portfolio Manager. However, because a manufacturing property type target may not be appropriate for such facilities, CEO will assign an individualized target at the facility owners' request for each marijuana cultivation facility based on the facility's gross floor area and energy usage. As with mixed use buildings, data centers, marijuana cultivation facilities, and covered buildings with EV charging are also not limited from complying the compliance pathways in Part C, Sections I.A. or I.B.

The BPS Task Force recommendations suggested consideration of the possibility of demand response/flexibility as an additional compliance pathway to help achieve the GHG emission reductions because the technologies shift the building's energy demand to non-peak times. Grid-interactive efficient buildings are energy efficient buildings that use smart technologies, batteries, and on-site distributed energy resources to provide demand flexibility while co-optimizing for energy cost, grid services, and occupant needs and preferences in a continuous and integrated way. At the time these rules were adopted, there was insufficient infrastructure and no standardized industry methodology for measuring a building's demand response/flexibility capabilities to support demand response/flexibility as a compliance pathway. However, the Commission recognizes the value in demand response/flexibility integration in buildings to better control building energy use and encourages the continued investigation into potentially crediting covered buildings for the use of these programs in the future.

Compliance Adjustments

Under Part C, Section II., when a covered building cannot achieve compliance with the building performance standards through the compliance pathways, the Commission adopted a process by which the covered building owner may request timeline and/or performance target adjustments. Section II. provides examples of circumstances under which a covered building owner may apply for a compliance adjustment. The following provides some demonstrative context for those requirements.

- "Cost prohibitive" refers to the steps that a building owner would need to take to demonstrate the cost of compliance is higher than the benefit.

  If the equipment has a resale/salvage value, the cost of that equipment is the upfront cost minus the salvage value. If the buyer has obtained incentives (utility, local, state, or federal) for buying the equipment, then the cost of the equipment is further reduced by the amount of the incentive received. The cost of installing the equipment and the cost of its upkeep during its useful life are then added to that cost figure to determine the overall cost of the equipment.

  The benefits of installing the equipment include reduced energy use and reduced emissions. The dollar amount of that energy savings is determined by multiplying the amount of energy saved by the price of energy of the applicable fuel as forecasted by the U.S. Energy Information Administration for the target year of compliance plus anticipated demand response savings.

  The social cost of greenhouse gases are the most recent assessment of the social cost for those greenhouse gases for which the federal government has determined the cost. However, it cannot be below the figure set in 2016 using a two and one-half percent discount rate as established by the federal interagency working group on the social cost of carbon. The dollar value of emission reduction is determined by multiplying the amount of emission reduction in metric ton of carbon dioxide equivalent by the social cost of greenhouse gases. The total benefit associated with installing equipment is, thus, determined by adding the dollar amounts of energy savings and of emission reduction using the social cost of greenhouse gases.

  Whereas some of the costs and benefits are obtained in the year the equipment is installed, the rest occur over the useful life span of that equipment. Because benefits/costs that occur in the future are not valued the same way as benefits/costs that occur in the year of investment, those figures have to be discounted so that their present value equivalents can be determined. If the equipment has a two-year useful life, any benefit/cost that is incurred in the second year is discounted using the following formula:

  $$\text{Present Value} = \frac{\text{Future Value}}{(1+r)^2}$$

  In calculating present value, "r" is the discount rate (e.g., when using a 2.5% discount rate, use 0.025) and "2" is used in this example because the benefit/cost is occurring in the second year. This calculation provides the second year's benefits/costs in the present year's terms. Adding the first year's value and the present value version of the benefit/cost that occurred in the second year provides the equipment's benefit/cost over its useful lifetime of 2 years. For benefits/costs that are incurred/obtained in the third, fourth, and other years in the equipment's useful life, use 3, and 4, and others as applicable. Applying this procedure to each benefit and cost item results in the total net present value of cost and benefits associated with that equipment. If the total present value of the benefit is higher than the present value of cost, then this equipment is not cost prohibitive. If the present value of the cost is higher than the present value of benefit, then the equipment is cost prohibitive.

- "Inherent and unique characteristics" refer to qualities specific to an individual building that limits the building from complying with the building performance standards (e.g., age, design, distinct features, physical characteristics). These traits are not generalized between building types, are unique to the applicable building, and must be approved by CEO before receiving a compliance adjustment.

- "Significant variations in operations from a standard building in that building type category" refers to a building that belongs to a certain building type category that may not have the same building function, design, or construction as other buildings in the same category.

- "Under-resourced building" refers to a building with less access to resources, including revenues, funding, grants, or gifts that can help with building operations or to comply with the requirements of this rule, than other buildings within the same building type in the same utility service territory.

In addition, a covered building utilizing a novel alternative emissions reduction technology, such as carbon capture, could qualify under the compliance adjustment provisions as its operations would have a significant variation from other buildings through use of such a technology. Part C, Section II. provides an avenue for consideration of other alternative reduction technologies such as carbon capture through the adjusted performance target provisions. Specifically, Section II.B.3.b. allows "covered buildings with significant variations in operations from a standard building in that building type category" to apply for an adjusted target.

Buildings seeking a compliance adjustment under Part C, Section II., must have an energy audit performed on the building to demonstrate why the building was unable to reach compliance. The energy audit must follow the requirements in the United States Department of Energy's Building Energy Audit Template, ASHRAE's standard 211-2018 or more current level 2 audit, or an energy audit of similar requirements approved by CEO. All energy audits submitted for compliance adjustments must be performed by an accredited third-party auditor. Examples of acceptable energy auditor certifications are Certified Energy Auditor (Association of Energy Engineers), Certified Energy Manager (Association of Energy Engineers), Building Energy Assessment Professional (ASHRAE), Energy Management Professional (Energy Management Association), Multifamily Building Analyst (Building Performance Institute), or other energy auditor accreditations or certification recognized or deemed equivalent by the United States Department of Energy. The EUI target adjustment request must also include an inventory of all existing air and water heating and cooling equipment and an inventory of all required equipment needed to meet the building's assigned EUI or emission target. In approving adjustments, CEO may consider standard target adjustments based on the Environmental Protection Agency (EPA) suggested methods in addition to the other factors outlined in the target adjustment process in Part C, Sections II.B. and II.C.

Certain covered buildings in Denver receive steam from the Denver District Steam System for a variety of purposes, including space heating, use in steam radiators, and heating domestic hot water. At the time of this rulemaking, the Denver District Steam System was subject to a proceeding before the Colorado Public Utilities Commission (Proceeding Number 22A-0382ST) regarding the operations of the system through 2030 and consideration of alternate technologies to replace the system. Acknowledging this uncertainty and its potential impact on large capital investments, the Commission recognizes that covered buildings on the Denver District Steam System may qualify to apply for either a timeline or performance target adjustment. However, any such adjustment would need to be substantiated in accordance with Part C, Section II. and would be at the discretion of CEO.

Penalties

Pursuant to § 25-7-122(1), the Commission adopted civil penalty provisions related to a covered building owner's failure to comply with the benchmarking and building performance standards requirements. § 25-7-122(1) specifies values of $2,000 for a first violation of the performance standards and $5,000 for a second violation. In addition to these provisions, the Commission adopted additional reporting and compliance demonstration requirements for building owners that fail to comply with the building performance standards, clarifying that building owners must demonstrate progress until coming into compliance and that failure to do so may result in a finding of additional violations. The Commission expects that the potential for these additional penalty assessments will further incentivize covered building owner compliance.

Utility Data Reporting

§ 25-7-142(4) contains statutory requirements incumbent upon qualifying utilities concerning the collection and provision of energy-use data for its customers, including covered building owners and tenants. Both the definition of "qualifying utility" at § 25-7-142(2)(u) and the duties created under § 25-7-142(4) are explicit and clear. These provisions are enforceable as a provision of part 1 of the Act by the Commission and Division under § 25-7-115. Furthermore, qualifying utilities providing electric service are subject to extensive data gathering and provision requirements in the Colorado Public Utilities Commission's (PUC) Rules Regulating Electric Utilities at 4 CCR 723-3, Sections 3025 - 3035 concerning "Customer Data Access and Privacy." Under these PUC rules, customers may request the release of this information through the Consent to Disclose Utility Customer Data form. Given these preexisting statutory and regulatory duties governing this conduct, the Commission did not adopt any additional rules in this regard.

Sale and Lease of Covered Buildings

§ 25-7-142(6) contains statutory requirements dependent on the sale or lease of buildings covered under the building performance standards. If a covered building or a portion of a covered building is for sale or lease, the covered building owner must provide an electronic copy of the building's reported benchmarking data to all prospective buyers or lessees, any brokers as defined in § 12-10-201(6) C.R.S., any person making an inquiry about the property, or any major commercial real estate listing services on which the property is listed. The benchmarking data should be of the building's previous calendar year or from the most recent twelve-month period of continuous occupancy. If a covered building changes ownership, the former owner must make available to the new owner the energy-use data, utility customer consent documentation, and any other information about the property that is necessary to benchmark the covered building. The former owner must transfer to the new owner both the record representing the covered building's information in the benchmarking tool and the request to a qualified utility for aggregated data. The new owner may request and receive from a qualifying utility the aggregated data necessary to fulfill benchmarking reporting requirements. Given these preexisting statutory and regulatory duties governing this conduct, the Commission did not adopt any additional rules in this regard.

Future Year Standards

§ 25-7-142(8)(a)(II)(C) granted the BPS Task Force the opportunity to provide recommendations for "advising, soliciting public input on, and making recommendations to the commission on performance standards for 2030 to 2050" that will align with the State's 2050 GHG reduction targets. The Commission understands that CEO will continue to evaluate submitted benchmarking data as well as compliance demonstrations to evaluate implementation and performance under this regulation and encourages CEO to consider convening a new task force to evaluate potential future revisions to these standards as well as to evaluate additional building performance standards beyond 2030.

The CEO will report to the Commission on the implementation of Regulation Number 28 on a regular basis. The report may include information on benchmarking reporting statistics, benchmarking waivers

and exemptions, the number of requests for adjustments received and the number of adjustments granted, and other information regarding program implementation. The Division will also report to the Commission on the implementation of Regulation Number 28 on a regular basis to provide updates on progress towards meeting the 2026 and 2030 targets, penalties, and any other information regarding program implementation.

The Colorado Department of Public Health and Environment will undertake future rulemakings as needed after evaluating implementation of the rule and its effectiveness in achieving statutory greenhouse gas emission reduction targets, and make needed improvements, including in 2027 or early 2028 as informed by the compliance data for the 2026 targets.

Finally, the Commission recognizes that Regulation Number 28 is a new program and will apply to many entities that have not previously been subject to rules promulgated by the Commission. Throughout this rule, language has been developed to ensure that this rule provides reasonable flexibilities and is cost-effective for owners of covered buildings, including approving, where appropriate, adjustments to performance targets and timelines which may extend beyond 2030, while simultaneously ensuring that the state will meet the targets established in § 25-7- 142(8)(c).

Federal vs. State-Only Conditions (if applicable)

The revisions to Regulation Number 28 do not exceed or differ from the requirements of the federal act or rules, therefore, 25-7-110.5(5)(a) does not apply.

Findings of Fact

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gasses related to building performance.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

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Tracking number: 2023-00246

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 08/17/2023

5 CCR 1001-32

REGULATION NUMBER 28 Building Benchmarking and Performance Standards

The above-referenced rules were submitted to this office on 08/18/2023 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.

September 01, 2023 09:54:38

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

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5 CCR 1002-11

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5 CCR 1002-11 REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS 1 - eff 10/15/2023

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10/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS

5 CCR 1002-11

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

11.1 AUTHORITY AND PURPOSE

11.1(1) Authority

The Water Quality Control Commission has promulgated the *Colorado Primary Drinking Water Regulations* pursuant to sections 24-4-104, 24-4-105, 25-1.5-101, 25-1.5 Part 2, 25-1-109, 25-1-114, 25-1-114.1, and 25-8-202, Colorado Revised Statutes.

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11.17 LEAD AND COPPER RULE REVISIONS

11.17(1) Applicability and Definitions

(a) For all community and non-transient, non-community water systems, the supplier must comply with the requirements specified in this rule beginning October 16, 2024 unless otherwise specified.

(i) The requirements in this rule and the deadline by which the supplier must begin to comply are based on Subpart I of the National Primary Drinking Water Regulations, 40 CFR 141, as originally published in the Federal Register on January 15, 2021, 86 Fed. Reg. 4198 (Jan. 15, 2021), and made effective on December 16, 2021, 86 Fed. Reg. 71,574 (Dec. 17, 2021). In the event EPA stays or extends the provisions in 40 CFR 141, Subpart I through future rulemaking, the provisions in 11.17 which correspond to the requirements in 40 CFR 141, Subpart I, shall also be stayed or extended, in part or in whole, and the requirements of 11.26 shall remain in effect until the applicable compliance date of the new rules found at 40 CFR 141.

(b) Failure to comply with the applicable requirements of this section, 11.17, is a violation of the *Colorado Primary Drinking Water Regulations* unless otherwise determined by the Department.

(c) For the purposes of this rule, systems are categorized as follows:

(i) “SMALL SYSTEM” means a system that supplies less than or equal to (≤) 10,000 people.

(ii) “MEDIUM SYSTEM” means a system that supplies greater than (>) 10,000 and less than or equal to (≤) 50,000 people.

(iii) “LARGE SYSTEM” means a system that supplies greater than (>) 50,000 people.

(d) “ACTION LEVEL” means the concentration of lead and copper at which the supplier is required to comply with additional requirements, which may include public education, corrosion control treatment, source water treatment and/or lead service line replacement.

(e) "AERATOR" means the device embedded in the water faucet to enhance air ploy with the water stream and prevent splashing.

(f) "CHILD CARE FACILITY" means a location that houses a state-licensed provider of childcare, day care, or early learning services to children.

(g) "ELEMENTARY SCHOOL" means a school classified as elementary by the state that generally serves children in kindergarten through grade 5, but may include preschools and extend as far as grade 8.

(h) "FIFTH LITER SAMPLE" means a one-liter sample of tap water collected in accordance with 11.17(3).

(i) "FIND-AND-FIX" means the requirements that a supplier must perform at every tap sampling site that yielded a lead result above 0.015 mg/L.

(j) "FIRST-DRAW SAMPLE" means the first one-liter sample of water collected in accordance with 11.17(3).

(k) "FULL LEAD SERVICE LINE REPLACEMENT" means the replacement of a lead service line (as well as galvanized service lines requiring replacement) that results in the entire length of the service line, regardless of service line ownership, meeting the Safe Drinking Water Act (SDWA) Section 1417 definition of lead free applicable at the time of the replacement. A full lead service line replacement includes a replacement where only one portion of the service line is lead, such as where a partial lead service line was previously conducted, as long as, upon completion of the replacement, the entire service line meets the SDWA Section 1417 definition of lead-free applicable at the time of the replacement. Galvanized service lines that are or were downstream of a lead service line must also be replaced for a service line to be a full lead service line replacement. A lead service line that is left in place in the ground but remains out-of-service may be full lead service line replacement where a new non-lead service line is installed for use instead of the out-of-service lead service line.

(l) "GALVANIZED SERVICE LINE" means iron or steel piping that has been dipped in zinc to prevent corrosion and rusting.

(m) "GOOSENECK, PIGTAIL, OR CONNECTOR" means a short section of piping, typically not exceeding two feet, which can be bent and used for connections between rigid service piping. Lead goosenecks, pigtails, and connectors are not considered to be part of the lead service line but may be required to be replaced pursuant to 11.17(7).

(n) "LEAD SERVICE LINE" means a portion of pipe that is made of lead, which connects the water main to the building inlet. A lead service line may be owned by the supplier, owned by the property owner, or both. A galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material. If the only lead piping serving the home or building is a lead gooseneck, pigtail, or connector, and it is not a galvanized service line that is considered a lead service line, the service line is not a lead service line. For purposes of 11.17(3)(a) only, a galvanized service line is not considered a lead service line.

(o) "LEAD STATUS UNKNOWN" means a service line that has not been demonstrated to meet or not meet the SDWA Section 1417 definition of lead free. It is not necessary to physically verify the material composition (for example, copper or plastic) of a service line for its lead status to be identified (e.g., records demonstrating the service line was installed after a municipal, State, or Federal lead ban).

(p) "LEAD TRIGGER LEVEL" means a particular concentration of lead in water that requires additional activities, including corrosion control treatment, and lead service line replacement. The trigger level for lead is a concentration of 0.010 mg/L.

(q) "METHOD DETECTION LIMIT (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

(r) "OPTIMAL CORROSION CONTROL TREATMENT" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the supplier to violate any provision of the Colorado Primary Drinking Water Regulations.

(s) "PARTIAL LEAD SERVICE LINE REPLACEMENT" means replacement of any portion of a lead service line or galvanized service line requiring replacement that leaves in service any length of lead service line or galvanized service line requiring replacement upon completion of the work. Partial lead service line replacements are permitted under limited circumstances but do not count towards the mandatory or goal-based lead service line replacement rate.

(t) "PITCHER FILTER" means a non-plumbed water filtration device which consists of a gravity fed water filtration cartridge and a filtered drinking water reservoir that is certified by an American National Standards Institute accredited certifier to reduce lead in drinking water.

(u) "POINT-OF-USE TREATMENT DEVICE OR POINT OF USE DEVICE (POU)" means a water treatment device physically installed or connected to a single fixture, outlet, or tap to reduce or remove contaminants in drinking water that is certified by an American National Standards Institute accredited certifier to reduce lead in drinking water.

(v) "PRACTICAL QUANTITATION LIMIT (PQL)" means the minimum concentration of an analyte (substance) that can be measured with a high degree of confidence that the analyte is present at or above that concentration.

(w) "PRE-STAGNATION FLUSHING" means the opening of tap(s) to flush standing water from plumbing prior to the minimum six-hour stagnation period in anticipation of lead and copper tap sampling under 11.17(3). Pre-stagnation flushing is prohibited in sampling under 11.17(3).

(x) "SCHOOL" means any building(s) associated with public, private, or charter institutions registered with the Colorado Department of Education that primarily provides teaching and learning for elementary or secondary students.

(y) "SECONDARY SCHOOL" means a school defined by the state as a middle school (or junior high) or high school that generally serves children in grades 6 through 12.

(z) "SYSTEM WITHOUT CORROSION CONTROL TREATMENT" means a public water system that does not have, or purchases all of its water from a system that does not have, an optimal corrosion control treatment approved by the State; or any pH adjustment, alkalinity adjustment, and/or corrosion inhibitor addition resulting from other water quality adjustments as part of its treatment train infrastructure.

(aa) "TAP SAMPLING MONITORING PERIOD", for the purposes of this section, means the period of time during which each supplier must conduct tap sampling for lead and copper analysis. A tap sampling monitoring period is determined by lead and copper concentrations in tap samples and the frequency can range from every six months (i.e., semi-annual) up to once every nine years. The start of each new tap sampling monitoring period, with the exception of semi-annual monitoring, must begin on January 1.

(bb) "TAP SAMPLING PERIOD", for the purpose of this section, means the time period, within a tap sampling monitoring period, during which the supplier is required to collect samples for lead and copper analysis. For suppliers monitoring at a reduced frequency, the tap sampling period must be between the months of June and September, unless a different four-month period of time is approved in writing to be more appropriate by the Department.

(cc) "TAP SAMPLING PROTOCOL" means the instructions given to residents or those sampling on behalf of the water system to conduct tap sampling for lead and copper.

(dd) "WIDE-MOUTH BOTTLES" means bottles configured with a mouth that is at least 55 mm wide that are one liter in size.

11.17(2) Requirements for Lead Service Line Inventory

(a) Development of Lead Service Line Inventory

(i) The supplier must develop a lead service line inventory to identify the materials of all service lines connected to the distribution system regardless of ownership status (e.g., where service line ownership is shared, the inventory must include both the system-owned and customer-owned portion of the service line).

(ii) The lead service line inventory must meet all of the following requirements:

(A) The supplier must use any information on lead and galvanized iron or steel that the supplier has identified pursuant to 11.2(2) and review the following sources of information to identify service line materials for the initial inventory:

(I) All construction and plumbing codes, permits, and existing records or other documentation which indicates the service line materials used to connect structures to the distribution system.

(II) All system records, including distribution system maps and drawings, historical records on each service connection, meter installation records, historical capital improvement or master plans, and standard operating procedures.

(III) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system.

(IV) Any resource, information, or identification method provided or required by the Department to assess service line materials.

(V) Other sources of information not listed in 11.17(2)(a)(ii)(A)(I-IV), if approved by the Department.

(B) Each service line, or portion of the service line where ownership is split, must be categorized in the following manner:

(I) "Lead" where the service line is made of lead.

(II) "Galvanized Requiring Replacement" where a galvanized service line is or was at any time downstream of a lead service line or is currently downstream of a "Lead Status Unknown" service line. If the supplier is unable to demonstrate that the galvanized service line was never

downstream of a lead service line, the supplier must presume there was an upstream lead service line.

(III) "Non-lead" where the service line is determined through an evidence-based record, method, or technique not to be lead or galvanized requiring replacement. The supplier may classify the actual material of the service line (i.e., plastic or copper) as an alternative to classifying it as "Non-lead."

(IV) "Lead Status Unknown" where the service line material is not known to be lead, galvanized requiring replacement, or a non-lead service line, such as where there is no documented evidence supporting material classification.

(C) The supplier must identify and track service line materials in the inventory as they are encountered in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities).

(D) The supplier must update the inventory based on all applicable sources described in 11.17(2)(a)(ii)(A)(I-V) and 11.17(2)(a)(ii)(C) and any lead service line replacements or service line material inspections that may have been conducted.

(I) The supplier may use other sources of information if approved by the Department and must use other sources of information provided or required by the Department to update the inventory.

(b) Public Availability of the Lead Service Line Inventory

(i) The supplier must make the lead service line inventory publicly accessible.

(A) The inventory must include a location identifier, such as a street address, block, intersection, or landmark, associated with each lead service line and galvanized requiring replacement service line. The supplier may list the exact address of each service line.

(B) If the system serves greater than (>) 50,000 people, the supplier must make the lead service line inventory publicly available online.

(C) When the system has no lead, galvanized requiring replacement, or lead status unknown service lines (regardless of ownership) in its inventory, the supplier may comply with the requirements as specified in 11.17(2)(b)(i)(A-B) using a written statement, in lieu of the inventory, stating that the distribution system has no lead service lines or galvanized requiring replacement service lines.

(I) The statement must include a general description of all applicable sources of information, identification methods, and resources described in 11.17(2)(a) used to make this determination.

(ii) The supplier must update its publicly accessible lead service line inventory no less frequently than when required to submit the updated inventory to the Department.

(iii) For community water systems, the supplier must include instructions on how to access the service line inventory, including inventories consisting only of a statement in accordance with 11.17(2)(b)(i)(C), in their Consumer Confidence Report as specified in 11.34.

(c) Consumer Notification of Service Line Materials

(i) The supplier must provide notification to all consumers supplied by a lead, galvanized requiring replacement, or lead status unknown service line. Notification is not required to be provided to consumers supplied by service lines that are all non-lead. The notification must contain all of the following:

(A) A statement indicating the material type of the consumer's service line, either lead, galvanized requiring replacement, or unknown material that may be lead.

(B) An explanation of the health effects of lead that meets the requirements of 11.17(8)(b)(i)(B).

(C) A list of steps the consumer can take to reduce exposure to lead in drinking water.

(D) For consumers with lead status unknown service lines, information about opportunities to verify the material of the service line.

(E) For consumers with lead and/or galvanized requiring replacement service lines, information about opportunities for replacement of the service line.

(F) For consumers with lead service lines, information on financing solutions to assist the property owner with replacement of their portion of the lead service line.

(G) For consumers with lead service lines where service line ownership is shared, a statement that the supplier is required to replace their portion of the lead service line when the property owner notifies them that they are replacing their portion of the lead service line.

(ii) The supplier must distribute the notification to consumers supplied by the system at the service connection with a lead, galvanized requiring replacement, or lead status unknown service line by mail or by another Department-approved method.

(A) The supplier must distribute the initial notification to consumers no later than 30 days after completion of the lead service line inventory.

(B) The supplier must continue to distribute the notification to affected consumers on an annual basis until the entire service line contains no portion that is lead, galvanized requiring replacement, or lead status unknown.

(C) For new customers, the supplier must also distribute the notification at the time of service initiation.

(d) Reporting Requirements for Lead Service Line Inventory and Notices

(i) The supplier must submit an initial lead service line inventory to the Department no later than October 16, 2024. The supplier must make the inventory publicly available at the time of submittal.

(A) For new systems and reclassified systems subject to this rule after October 16, 2024, the supplier must submit an initial lead service line inventory to the Department no later than 30 days after the end of the first lead and copper tap sampling monitoring period.

(ii) The supplier must submit an updated lead service line inventory no later than 30 days after each lead and copper tap sampling monitoring period, but no more frequently than annually.

(iii) If the supplier has demonstrated that it has no lead, galvanized requiring replacement, or lead status unknown service lines in its inventory, the supplier is no longer required to submit lead service line inventory updates as specified in 11.17(2)(d)(ii) to the Department.

(A) If the supplier subsequently discovers any lead or galvanized requirement replacement service lines in its distribution system, the supplier must notify the Department within 30 days of identifying the service line(s) and prepare an updated inventory in accordance with 11.17(2)(a) on a Department-specified schedule.

(iv) For systems with one or more lead, galvanized requiring replacement, or lead status unknown service lines, by no later than July 1 of each calendar year, the supplier must submit a sample copy of the service line material notification along with a certification that the notification was distributed, as specified in 11.17(2)(c), during the previous calendar year.

(e) Treatment Technique Violations and Response for Lead Service Line Inventory

(i) If the supplier fails to develop a lead service line inventory as specified in 11.17(2)(a)(i), a treatment technique violation occurs.

(ii) In the event of a lead service line inventory treatment technique violation, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs; and

(B) Distribute Tier 2 public notice as specified in 11.33.

11.17(3) Requirements for Lead and Copper Tap Sampling

(a) Sample Site Selection for Lead and Copper Tap Samples

(i) The supplier must use the information on lead, copper, and galvanized iron or steel that is required to be identified under 11.2(2) when conducting a materials evaluation, and the information on lead service lines that is required to be collected under 11.17(2) to identify a sample pool of targeted sampling sites and categorize each sample site as specified in Table 11.17-I.

(A) For systems with lead, galvanized requiring replacement, or lead status unknown service lines in the lead service line inventory conducted under 11.17(2), the supplier must re-evaluate the tap sampling locations used in their sampling pool no later than October 16, 2024.

(B) Based on changes to the service line inventory conducted in 11.17(2), the supplier must re-evaluate the tap sampling locations used in their sample pool prior to each subsequent round of tap sampling conducted by the system, or annually, whichever is more frequent.

TABLE 11.17-I LEAD AND COPPER TAP SAMPLE TIER CATEGORIES

Tier category	For community water systems	For non-transient, non-community water systems
Tier 1	Single-family structures that are supplied by a lead service line.	Sites that are supplied by a lead service line.
Tier 2	Buildings, including multiple-family residences, that are supplied by a lead service line.	Not applicable.
Tier 3	Single-family structures that contain galvanized lines identified as being downstream of a lead service line (LSL) currently or in the past, or known to be downstream of a lead gooseneck, pigtail or connector.[1]	Sites that contain galvanized lines identified as being downstream of an LSL currently or in the past, or known to be downstream of a lead gooseneck, pigtail, or connector.[1]
Tier 4	Single-family structures that contain copper pipes with lead solder installed before the State's January 31, 1988 lead ban.	Not applicable.
Tier 5	Single-family structures or buildings, including multiple family residences, that are representative of sites throughout the distribution system.	Sites that are representative of sites throughout the distribution system.

1 Galvanized lines that are unknown to be downstream of a lead service line currently or in the past are "Galvanized Requiring Replacement" under the Lead Service Line Inventory section in 11.17(2) but do not qualify as Tier 3 sites

(ii) The supplier must complete a sampling pool with at least the number of sample sites specified in Table 11.17-II to ensure that the supplier can collect the number of lead and copper samples required in 11.17(3)(d).

TABLE 11.17-II LEAD AND COPPER SAMPLING POOL

Population Supplied	Minimum number of sites for sampling pool
Greater than (>) 100,000	100
10,001 to 100,000	60
3,301 to 10,000	40
501 to 3,300	20
101 to 500	10
Less than or equal to (≤) 100	5

(iii) The sampling sites for a community water system's sampling pool shall be completed as follows:

(A) The supplier's sampling pool must consist of Tier 1 sampling sites.

(I) When multiple-family residences comprise at least 20 percent of the structures supplied by the system, the supplier may include these types of structures in its Tier 1 sampling pool, if supplied by a lead service line.

(B) If the system has an insufficient number of Tier 1 sampling sites, the supplier must complete its sampling pool with Tier 2 sampling sites.

(C) If the system has an insufficient number of Tier 1 and Tier 2 sampling sites, the supplier must complete its sampling pool with Tier 3 sampling sites.

(D) If the system has an insufficient number of Tier 1, Tier 2, and Tier 3 sampling sites, the supplier must complete its sampling pool with Tier 4 sampling sites.

(E) If the system has an insufficient number of Tier 1, Tier 2, Tier 3, and Tier 4 sampling sites, the supplier must complete its sampling pool with Tier 5 sampling sites.

(I) The supplier must use single family or multiple family residential sites when there is a sufficient number of sites available. The supplier may use non-residential buildings that are representative of sites throughout the distribution system if and only if there are an insufficient number of single-family or multiple family residential Tier 5 sites available.

(F) The supplier must not use sites with lead status unknown service lines as Tier 1, Tier 2, Tier 3, or Tier 4 sampling sites.

(G) For systems with lead service lines, the supplier must collect all samples for monitoring under 11.17(3)(d) from sites supplied by a lead service line. If the supplier cannot identify a sufficient number of sampling sites supplied by a lead service line, the supplier must still collect samples from every site supplied by a lead service line and collect the remaining samples in accordance with the tiering requirements under 11.17(3)(a)(iii)(C-F).

(iv) The sampling sites for a non-transient, non-community water system's sampling pool shall be completed as follows:

(A) The supplier's sampling pool must consist of Tier 1 sampling sites.

(B) If the system has an insufficient number of Tier 1 sampling sites, the supplier must complete its sampling pool with Tier 3 sampling sites.

(C) If the system has an insufficient number of Tier 1 and Tier 3 sampling sites, the supplier must complete its sampling pool with Tier 5 sampling sites.

(D) The supplier must not use sites with lead status unknown service lines as Tier 1 or Tier 3 sampling sites.

(E) For systems with lead service lines, the supplier must collect all samples for monitoring under 11.17(3)(d) from sites supplied by a lead service line. If the supplier cannot identify a sufficient number of sampling sites supplied by a lead service line, the supplier must still collect samples from every site supplied by a lead service line and collect the remaining samples in accordance with the tiering requirements under 11.17(3)(a)(iv)(B-D).

(v) Sampling sites must not include sites with installed point-of-entry (POE) treatment devices and taps used at sampling sites may not have point-of-use (POU) devices designed to remove inorganic contaminants, unless one of the following conditions apply:

(A) The supplier is using the POE or POU devices and monitoring under 11.17(4)(i)(vi)(C).

(I) Lead and copper tap samples collected under 11.17(4)(i)(vi)(C)(VI) may not be used for the purposes of meeting the criteria for reduced monitoring specified in 11.17(3)(d)(v).

(B) The supplier is using POE or POU devices for the primary drinking water tap to meet other primary and secondary drinking water standards and all service connections have POE or POU devices to provide localized treatment for compliance with the other drinking water standards.

(b) Lead and Copper Action Levels and Trigger Level

(i) The lead trigger level and lead and copper action levels are as follows:

TABLE 11.17-III LEAD AND COPPER ACTION LEVELS AND LEAD TRIGGER LEVEL

Contaminant	Trigger Level (mg/L)	Action Level (mg/L)
Lead	0.010	0.015
Copper	N/A	1.3

(ii) The trigger level and action levels must be determined based on tap water samples collected in accordance with the tap sampling monitoring requirements of 11.17(3) for the purpose of calculating the 90th percentile and tested using the analytical methods specified in 11.46(9).

(iii) The trigger level and action levels as specified in 11.17(3)(b) are applicable to 11.17 where referenced.

(iv) The 90th percentile concentration shall be computed as follows:

(A) The results of lead or copper samples taken during a tap sampling period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. To determine the total number of samples for use in the 90th percentile calculation, the following conditions apply:

(I) For systems that do not have lead service line sites and only have sites identified as Tier 3, 4, or 5, the supplier must use all sample results.

(II) For systems with lead service lines with sites identified as Tier 1 or 2 with enough Tier 1 or 2 sites to meet the minimum number of sites specified in 11.17(3)(d), the supplier must use all sample results from only Tier 1 and 2 sites.

(III) For systems with lead service lines with sites identified as Tier 1 or 2 with an insufficient number of Tier 1 or 2 sites to meet the minimum number of sites specified in 11.17(3)(d), the supplier must use all sample results from Tier 1 and 2 sites and only the number of Tier 3, 4, or 5 sites with the highest concentration to meet the minimum number of sites specified in 11.17(3)(d).

(B) Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level must be equal to the total number of samples as determined in 11.17(3)(b)(iv)(A).

(C) The total number of samples for use in the 90th percentile calculation as determined in 11.17(3)(b)(iv)(A) shall be multiplied by 0.9.

(D) The contaminant concentration in the numbered sample yielded by the calculation in 11.17(3)(b)(iv)(C) is the 90th percentile concentration.

(I) The 90th percentile concentration is calculated using an interpolation between the ranked contaminant concentrations when the total number of samples multiplied by 0.9 does not result in a whole number.

(E) If the supplier collects five samples per tap sampling period under 11.17(3)(d), the 90th percentile concentration is the average of the highest and second highest concentration.

(F) For a supplier that has failed to collect five samples, the sample result with the highest concentration is considered the 90th percentile value.

(c) Sample Collection Methods for Lead and Copper Tap Samples

(i) The supplier must collect lead and copper tap samples as follows:

(A) For sites without a lead service line, the supplier must collect a first-draw sample. The first-draw sample must be analyzed for lead and copper in tap sampling periods where both contaminants are required to be monitored.

(I) In tap sampling periods where only lead is required to be monitored, the first-draw sample may be analyzed for lead only.

(B) For sites with a lead service line, the supplier must collect a first-draw sample and a fifth-liter sample.

(I) The first-draw sample must be analyzed for copper in tap sampling periods where both contaminants are required to be monitored.

(II) The fifth-liter sample must be analyzed for lead.

(C) All samples collected under 11.17(3)(d) must be collected using wide-mouth bottles. Each sample collected must be one liter in volume.

(D) Samples from residential housing must be collected from the cold-water kitchen or bathroom sink tap.

(E) Samples from a nonresidential building must be collected at a tap from which water is typically drawn for consumption.

(F) For first-draw samples, the sample must be collected where water has stood motionless in the plumbing system of each sampling site for at least six hours without flushing the tap prior to sample collection (i.e., pre-stagnation flushing).

(G) For fifth-liter samples, the supplier must collect tap water in five consecutively numbered one-liter sample bottles with each subsequently numbered bottle being filled until the final bottle is filled with the water running constantly during sample collection. The fifth-liter sample is the final sample collected in this sequence.

(I) Unless the Department has allowed substitution for non-first-draw samples under 11.17(3)(c)(i)(I), the samples must be collected after the

water has stood motionless in the plumbing of each sampling site for at least six hours without flushing the tap prior to sample collection.

(H) The supplier may allow residents to collect first-draw or fifth-liter samples after instructing residents of the proper sampling procedures with the following conditions:

(I) The procedures may not include instructions for aerator removal and cleaning or flushing of taps prior to the start of the minimum six-hour stagnation period (i.e., pre-stagnation flushing).

(II) To avoid problems of residents handling nitric acid, acidification of first-draw samples may be done up to 14 days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed.

(III) If a supplier allows residents to perform sampling, the supplier may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(I) A non-transient, non-community water system, or a community water system that meets the criteria specified in 11.17(8)(c)(v)(A-B), that does not have enough taps that can supply first-draw samples or fifth-liter samples meeting the six-hour minimum stagnation time may apply to the Department in writing to substitute non-first-draw, first-draw, or fifth-liter samples that do not meet the six-hour minimum stagnation time.

(I) For a supplier collecting samples not meeting the six-hour stagnation time with Department approval, the supplier must collect as many first-draw or fifth-liter samples from interior taps typically used for consumption as possible and must identify sampling times and locations that would likely result in the longest standing time for the remaining sites.

(ii) The supplier must collect each first-draw tap and/or fifth-liter sample from the same sampling site from which it collected the previous sample in the prior tap sampling period.

(A) If, for reasons beyond the control of the system, the supplier cannot gain entry to a sampling site to collect a tap sample during a tap sampling period, the supplier must collect a tap sample from another sampling site in its sampling pool as long as the new site meets the same tier category, and is within reasonable proximity of the original site.

(d) Sampling Frequency for Lead and Copper Tap Samples

(i) The supplier must collect the following number of lead and copper tap samples per monitoring period:

(A) The supplier must collect at least one sample during each monitoring period from the number of sites listed in the first column (“standard monitoring”) of Table 11.17-IV unless the supplier meets the eligibility requirements for reduced monitoring as specified in 11.17(3)(d)(v).

(B) If the supplier is conducting reduced monitoring, the supplier must collect at least one sample from the number of sites specified in the second column ("reduced monitoring") of Table 11.17-IV.

(I) Reduced monitoring sites must be representative of the sites required for standard monitoring.

(C) If the distribution system has fewer than five taps that can be used for human consumption, the supplier must:

(I) Collect at least one sample from each tap; and

(II) Collect additional samples from those taps on different days during the monitoring period until the required number of samples have been collected.

TABLE 11.17-IV LEAD AND COPPER TAP SAMPLING SITES

Population supplied	Number of sites (standard monitoring)	Number of sites (reduced monitoring)
Greater than (>) 100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
Less than or equal to (≤) 100	5	5

(ii) Standard monitoring. Standard monitoring is a six-month tap sampling monitoring period that begins on January 1 or July 1 of the year in which the supplier is monitoring at the standard number of sites in accordance with 11.17(3)(d)(i). Suppliers on standard monitoring must monitor as follows:

(A) For systems with lead service lines, including those deemed optimized under 11.17(4)(b), and suppliers that did not conduct monitoring that meets all requirements of 11.17(3)(a) and 11.17(3)(c) between January 15, 2021 and October 16, 2024, the supplier must begin the first standard monitoring period on January 1 or July 1 in the year following October 16, 2024, whichever is sooner.

(I) Upon completion of this monitoring, the supplier must monitor in accordance with 11.17(3)(d)(ii)(B).

(B) For suppliers that conducted monitoring that meets all requirements as specified in 11.17(3)(a) and 11.17(3)(c) between January 15, 2021 and October 16, 2024, and for suppliers that have completed monitoring under 11.17(3)(d)(ii)(A), the supplier must continue monitoring as follows:

(I) Suppliers that do not meet the criteria under 11.17(3)(d)(v) must conduct standard six-month monitoring.

(II) Suppliers that meet the criteria under 11.17(3)(d)(v) must continue to monitor in accordance with the criteria specified in 11.17(3)(d)(v).

(III) Suppliers monitoring at a reduced frequency in accordance with 11.17(3)(d)(v) that exceed an action level must resume standard six-month monitoring beginning January 1 of the calendar year following the tap sampling monitoring period in which the system exceeded the action level. The supplier must also monitor in accordance with 11.17(5), as applicable.

(IV) Suppliers monitoring at a reduced frequency in accordance with 11.17(3)(d)(v) that exceed the lead trigger level but meet the copper action level must not monitor any less frequently than annually and must collect samples from the standard number of sites in Table 11.17-IV. Monitoring must begin the calendar year following the tap sampling monitoring period in which the system exceeded the lead trigger level. The supplier must also monitor in accordance with 11.17(5), as applicable.

(V) Suppliers that fail to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Department under 11.17(4) for more than nine days in any monitoring period specified in 11.17(5) must conduct standard six-month tap water monitoring and must resume sampling for water quality parameters in accordance with 11.17(5). This standard monitoring must begin no later than the six-month period beginning January 1 of the calendar year following the water quality parameter excursion.

(VI) For systems that become a large water system without corrosion control treatment or any large water system without corrosion control treatment whose lead 90th percentile exceeds the lead practical quantitation level of 0.005 mg/L, the supplier must conduct standard monitoring for at least two consecutive six-month tap sampling monitoring periods and then must continue monitoring in accordance with 11.17(3)(d)(ii)(B).

(iii) Monitoring after installation of initial or re-optimized corrosion control treatment, installation of source water treatment and addition of new source or change in treatment.

(A) For suppliers that install or re-optimize corrosion control treatment as a result of exceeding the lead or copper action level, the supplier must monitor for lead and copper every six months and comply with previously designated water quality parameter values, where applicable, until the Department specifies new water quality parameter values for optimal corrosion control.

(B) For suppliers that re-optimize corrosion control treatment as a result of exceeding the lead trigger level but not the lead or copper action levels, the supplier must monitor annually for lead at the standard number of sites listed in Table 11.17-IV. The supplier must monitor for copper once every three years at the reduced number of sites listed in Table 11.17-IV.

(I) Small and medium systems that do not exceed the lead trigger level in three annual monitoring periods may reduce lead monitoring in accordance with 11.17(3)(d)(v).

(C) Suppliers that install source water treatment pursuant to 11.17(6) must monitor for lead and copper every six months until the supplier is at or below lead and copper action levels for two consecutive six-month monitoring periods.

(I) Suppliers that do not exceed the lead or copper action level for two consecutive six-month monitoring periods may reduce monitoring in accordance with 11.17(3)(d)(v).

(D) If the supplier has notified the Department in writing of an upcoming addition of a new source or long-term change in treatment in accordance with 11.17(4)(j), the supplier must monitor for lead and copper every six months at the standard number of sites listed in Table 11.17-IV until the supplier is at or below the lead and copper action levels for two consecutive six-month monitoring periods.

(I) The Department may allow the supplier to sample at a reduced frequency if the addition of the new source or long-term treatment change do not have a significant impact to corrosivity.

(II) For suppliers that do not exceed the lead and copper action levels, and/or the lead trigger level for two consecutive six-month monitoring periods, the supplier may reduce monitoring in accordance with 11.17(3)(d)(v).

(iv) Monitoring after the Department specifies water quality parameter values for optimal corrosion control treatment.

(A) After the Department specifies the values for water quality parameters under 11.17(4)(c), the supplier must conduct standard six-month monitoring for two consecutive six-month tap sampling monitoring periods.

(I) The supplier may then reduce monitoring in accordance with 11.17(3)(d)(v), as applicable, following a Department determination that reduced monitoring is approved.

(B) Suppliers that are required to complete the re-optimization steps as specified in 11.17(4)(d) due to an exceedance of the lead trigger level that do not exceed the lead and copper action levels must monitor for two consecutive six-month tap sampling monitoring periods.

(I) The supplier may then reduce monitoring in accordance with 11.17(3)(d)(v), as applicable, following a Department determination that reduced monitoring is approved.

(v) Reduced monitoring based on 90th percentile levels. The Department may allow the supplier to collect lead and copper tap samples at a reduced frequency based on the supplier's 90th percentile lead and copper levels. Reduced monitoring refers to an annual or three-year tap sampling monitoring period.

(A) The supplier may reduce the monitoring frequency from six-month monitoring to annual monitoring and must sample at the standard number of sites for lead and the reduced number of sites for copper as specified in Table 11.17-IV, if the following conditions are met:

(I) The supplier meets the lead trigger level and the copper action level during two consecutive six-month tap sampling monitoring periods.

(II) For systems operating corrosion control treatment, the supplier must have maintained the range of optimal water quality parameters set by the Department in accordance with 11.17(4) for the same period and receive

a written determination from the Department approving annual monitoring based on the Department's review of monitoring, treatment, and other relevant information submitted by the supplier as required by 11.17(5); and

(III) Sampling must begin no later than the calendar year immediately following the last calendar year in which the supplier sampled.

(B) The supplier may reduce the monitoring frequency from six-month monitoring to annual monitoring and must sample at the standard number of sites for lead and copper as specified in Table 11.17-IV, if the following conditions are met:

(I) The supplier exceeds the lead trigger level but not the lead and copper action levels during two consecutive six-month tap sampling monitoring periods.

(II) For systems operating optimal corrosion control treatment, the supplier must have maintained the range of optimal water quality parameters set by the Department in accordance with 11.17(4) for the same period and receive a written determination from the Department approving annual monitoring based on the Department's review of monitoring, treatment, and other relevant information submitted by the supplier as required by 11.17(5); and

(III) Sampling must begin no later than the calendar year immediately following the last calendar year in which the supplier sampled.

(C) The supplier may reduce tap sampling for copper from annual to once every three years if the following conditions are met:

(I) The supplier exceeds the lead trigger level but not the lead and copper action levels during three consecutive years of monitoring.

(II) For systems operating optimal corrosion control treatment, the supplier must have maintained the range of optimal water quality parameters set by the Department in accordance with 11.17(4) for the same period and receive a written determination from the Department approving a three-year sampling frequency for copper based on the Department's review of monitoring, treatment, and other relevant information submitted by the supplier as required by 11.17(5).

(III) Lead sampling must remain on an annual frequency at a standard number of sites as specified in Table 11.17-IV; and

(IV) Sampling must begin no later than the third calendar year immediately following the last calendar year in which the supplier sampled.

(D) For small and medium systems, the supplier may reduce tap sampling for lead and copper from annual to once every three years at a reduced number of sites as specified in Table 11.17-IV if the following conditions are met:

(I) The supplier does not exceed the lead trigger level and the copper action level during three consecutive years of monitoring.

(a) Standard six-month monitoring prior to annual monitoring that is completed during both six-month periods of a calendar year is considered one year of monitoring.

(II) For systems operating optimal corrosion control treatment, the supplier must have maintained the range of optimal water quality parameters set by the Department in accordance with 11.17(4) for the same period and receive a written determination from the Department approving three-year monitoring based on the Department's review of monitoring, treatment, and other relevant information submitted by the supplier as required by 11.17(5); and

(III) Sampling must begin no later than the third calendar year immediately following the last calendar year in which the supplier sampled.

(E) The supplier may immediately reduce tap sampling for lead and copper from six-month monitoring to once every three years at a reduced number of sites in Table 11.17-IV if the following conditions are met:

(I) The 90th percentile in two consecutive six-month monitoring periods as calculated in 11.17(3)(b) is less than or equal to (≤) 0.005 mg/L for lead and less than or equal to (≤) 0.65 mg/L for copper; and

(II) For systems operating optimal corrosion control treatment, the system must maintain the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under 11.17(4) for the same period and receive a written determination from the Department approving three-year monitoring based on the Department's review of monitoring, treatment, and other relevant information submitted by the supplier as required by 11.17(5).

(F) If the supplier is on a three-year sampling frequency, the supplier must collect samples no later than every third calendar year.

(vi) If the supplier is on a reduced sampling frequency:

(A) The supplier must collect samples from the sampling sites identified in 11.17(3)(a).

(B) The supplier must collect lead and copper tap samples during the monitoring period of June through September of the same calendar year.

(C) The Department may approve a monitoring period other than the months of June through September for collecting lead and copper tap samples under the following conditions:

(I) The supplier must collect lead and copper tap samples:

(a) During a monitoring period that is no longer than four consecutive months, within one calendar year; and

(b) During a period representing normal operation where the highest levels of lead are most likely to occur.

(II) For non-transient, non-community water systems that do not operate during the months of June to September and where the supplier does not know when, during the period of normal operation, the highest levels of lead are most likely to occur, the Department will determine a monitoring period that represents normal operation for the system. The supplier must begin sampling in the designated monitoring period:

(a) If the supplier is on annual sampling, in the calendar year immediately following the end of the second six-month monitoring period.

(b) If the supplier is on three-year sampling, during the three-year compliance period following the end of the third consecutive year of annual monitoring.

(III) For suppliers monitoring annually that have been collecting samples during the months of June through September and that receive Department approval to alter their tap sampling monitoring period under 11.17(3)(d)(vi)(C), the supplier must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling.

(IV) For suppliers on a three-year sampling frequency that have been collecting samples during the month of June through September and receive Department approval to alter their sampling collection period under 11.17(3)(d)(vi)(C), the supplier must collect their next round of samples during a time period that ends no later than 45 months after the previous tap sampling period.

(a) Subsequent monitoring must be conducted annually or every third calendar year, as required by 11.17(3)(d)(v).

(V) For small systems, if the supplier is granted a waiver as specified in 11.17(3)(f), the supplier must collect lead and copper tap samples before the end of the nine-year compliance cycle.

TABLE 11.17-V MONITORING FREQUENCY BASED ON EVENTS

Monitoring frequency and number of sites	Situation or criteria
At least two six-month tap monitoring periods at standard number of sites	New community or non-transient, non-community water systems after October 16, 2024.
	Systems with lead service lines or galvanized requiring replacement service lines, or have made changes to their sample pool due to requirements in 11.17(3)(a) or sample collection in 11.17(3)(c) on or before October 16, 2024.
	Systems without corrosion control treatment that become a large system serving greater than 50,000 people.
	Large systems without corrosion control treatment whose lead 90th percentile exceeds 0.005 mg/L.
	Lead or copper action level exceedance.
	New source or long-term treatment change.

	Installation or re-optimization of Department-designated corrosion control treatment after lead trigger level or copper action level exceedance.
	Treatment technique violation for failure to maintain water quality parameters within Department-designated minimums and/or ranges for more than nine days within a monitoring period.
Reduced annual monitoring at standard number of sites for lead and reduced number of sites for copper	Systems with two consecutive six-month tap monitoring periods that do not exceed the lead trigger level and copper action level. Department approval may be needed in some situations.
Reduced three-year monitoring at reduced number of sites for lead and copper	Systems with two consecutive six-month tap monitoring periods less than or equal to 0.005 mg/L for lead and 0.65 mg/L for copper. Department approval is needed.
	Small or medium systems with three annual tap monitoring periods that do not exceed the lead trigger level and copper action level. Department approval is needed.
Reduced annual monitoring at standard number of sites for lead and reduced three-year monitoring at reduced number of sites for copper	Systems on reduced three-year monitoring that exceed the lead trigger level but not the lead and copper action levels.
	Systems with three annual tap monitoring periods that do not exceed the lead and copper action levels but have exceeded the lead trigger level.

*** Table is for illustrative purposes only. Please refer to 11.17(3) for specific requirements.

(e) Additional Lead and Copper Tap Samples

(i) The results of any monitoring conducted in addition to the minimum requirements of 11.17(3)(d) (such as customer-requested sampling) shall be considered by the supplier and the Department in making any determinations (i.e., calculating the 90th percentile lead or copper level) specified in 11.17.

(ii) If a supplier with lead service lines is unable to collect the minimum number of samples from Tier 1 or Tier 2 sites, the supplier must calculate the 90th percentile using data from all the lead service lines sites and the highest lead and copper values from lower tier sites to meet the specified minimum number of samples.

(A) The supplier must submit data from additional Tier 3, 4, or 5 sites to the Department but may not use these results in the 90th percentile calculation.

(iii) The supplier must include customer-requested samples from known lead service line sites in the 90th percentile calculation if the samples meet the requirements specified in 11.17(3).

(f) Tap Sampling Waiver Requirements for Systems Serving Less than or Equal to (≤) 3,300 People

(i) For systems serving less than or equal to (≤) 3,300 people, the supplier may apply to the Department for a lead and/or copper tap sampling waiver. The Department may grant a waiver if the supplier demonstrates that all of the materials criteria specified in 11.17(3)(f)(i)(B) and sampling criteria specified in 11.17(3)(f)(i)(C) have been met. The supplier may apply for a full waiver from sampling for both lead and copper, or a partial waiver from sampling for either lead or copper.

(A) By the start of the first applicable tap sampling monitoring period specified in 11.17(3)(d), the supplier must submit the required documentation to the Department to demonstrate that the supplier meets the waiver criteria as specified in 11.17(3)(f)(i)(B-C).

(B) The materials criteria for a waiver are as follows:

(I) The supplier must demonstrate that the distribution system, service lines, all drinking water supply plumbing, and plumbing conveying drinking water within all residences and buildings connected to the system are free of lead-containing materials and/or copper-containing materials.

(II) For a lead tap sampling waiver, the supplier must submit certification and supporting documentation that the system is free of all lead-containing materials. To be free of all lead-containing materials means the system meets both of the following criteria:

(a) The system contains no plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers.

(b) The system contains no lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 United States Code (U.S.C.) 300g-6(e) (Plumbing fittings and fixtures) (Safe Drinking Water Act section 1417(e)).

(III) For a copper tap sampling waiver, the supplier must submit certification and supporting documentation that the system contains no copper pipes or copper service lines.

(C) The sampling criteria for a waiver are as follows:

(I) The supplier must have completed at least one six-month compliance period of tap sampling for lead and copper at Department-approved sites and at the number of sites specified in Table 11.17-IV.

(II) For all samples collected since the system became free of all lead-containing and/or copper-containing materials, the sample results must demonstrate that:

(a) The 90th percentile lead level is less than or equal to (≤) 0.005 mg/L; and/or

(b) The 90th percentile copper level is less than or equal to (≤) 0.65 mg/L.

(ii) The supplier must continue collecting lead and copper tap samples as specified in 11.17(3)(d) until the supplier receives written notification from the Department that the waiver has been approved.

(iii) The Department will notify the supplier in writing of the waiver determination and include the basis for the decision and any conditions of the waiver.

(A) As a condition of the waiver, the Department may require the supplier to perform specific activities (e.g., periodic outreach to customers to remind them to avoid installation of materials that might void the waiver) to avoid the risk of lead and copper levels of concern at the taps.

(iv) If the Department grants a full or partial waiver, the supplier must:

(A) Collect lead and/or copper tap samples for the waived contaminant(s) at least once every nine years at the reduced number of sample sites specified in Table 11.17-IV.

(I) The supplier must collect tap samples no later than every ninth calendar year.

(II) The supplier must collect tap samples during the months of June through September or during an alternative Department-approved monitoring period as specified in 11.17(3)(d)(vi)(C).

(III) If the supplier is granted a partial waiver, the supplier must collect tap samples for the non-waived contaminant as specified in 11.17(3)(d).

(B) Submit the applicable materials certification as specified in 11.17(3)(f)(i)(B)(II-III) each time the supplier submits sample results.

(C) Submit to the Department for approval of any upcoming long-term change in treatment or the addition of a new source as specified in 11.17(4)(j).

(I) The Department may require the supplier to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials or require additional round(s) of monitoring) if it determines that such additions and modifications are necessary to address treatment or source water changes at the system.

(D) Notify the Department, in writing, no later than 60 days after the supplier becomes aware that the system is no longer free of lead-containing or copper-containing materials (e.g., as a result of new construction or repairs).

(I) The supplier must include information regarding the circumstances that resulted in the lead-containing and/or copper-containing materials being introduced into the system.

(II) The supplier must specify what corrective action, if any, will be taken for the removal of these materials.

(v) If the supplier continues to comply with the materials and sampling criteria as specified in 11.17(3)(f)(i)(B-C), the waiver will be renewed automatically.

(A) No later than nine years after the previous round of sampling is completed, the supplier must submit documentation to demonstrate that the criteria specified in 11.17(3)(f)(i)(B-C) have been met.

(vi) If the supplier fails to meet the materials and sampling criteria as specified in 11.17(3)(f)(i)(B-C), the waiver will be revoked.

(A) The Department will notify the supplier in writing that the waiver has been revoked and the basis for the decision.

(B) If the waiver is revoked, the supplier must comply with the lead and copper tap sampling requirements specified in 11.17(3)(d).

(C) If the waiver is revoked and both the lead and copper action levels have been met, the supplier must collect lead and copper tap samples no less frequently than once every three years at the reduced number of sample sites specified in Table 11.17-IV.

(vii) The supplier may re-apply for a waiver when the materials and sampling criteria specified in 11.17(3)(f)(i)(B-C) have been met.

(g) Invalidation of Lead and Copper Tap Samples

(i) The Department may invalidate a lead or copper tap sample based on one or more of the following conditions:

(A) The laboratory determines that improper sample analysis caused erroneous results.

(B) The sample container was damaged in transit.

(C) There is substantial reason to believe that the sample was subject to tampering.

(D) The Department determines that the sample was collected from a site that did not meet the site selection criteria specified in 11.17(3)(a).

(ii) No later than the 10th of the month following the end of each monitoring period, the supplier must report all lead and copper tap sample results along with all supporting documentation for the sample(s) that the supplier is requesting the Department to invalidate.

(A) If the supplier allows residents to collect the lead and copper tap samples, the supplier may not challenge, based on alleged errors in sample collection, the accuracy of the sample results.

(iii) The Department shall document in writing whether the sample was invalidated and the rationale for the decision.

(A) The Department shall not invalidate a sample based solely on the grounds that another sample collected at the same site has a result that is higher or lower than the original sample.

(iv) If the Department invalidates a sample, the result does not count toward determining the lead or copper 90th percentile or toward meeting the minimum number of samples required as specified in 11.17(3)(d).

(v) If the Department invalidates a sample and there are too few samples remaining to meet the minimum sampling requirement, the supplier must collect replacement samples.

(A) The supplier must collect replacement samples as soon as possible but no later than 20 days after the date the Department invalidates the sample or by the end of the applicable monitoring period, whichever is later.

(I) If the supplier collects replacement samples after the end of the applicable monitoring period, the samples will only satisfy the sampling requirements of that monitoring period and must not be used to satisfy the sampling requirements of any other monitoring period.

(B) The supplier must collect replacement samples at the same site(s) as the invalidated sample(s) or, if that is not possible, at sites that were not being used for sampling during the applicable monitoring period.

(h) Consumer Notification of Lead Tap Sample Results

(i) The supplier must provide a notice of the individual tap results from lead tap water monitoring carried out under the requirements of 11.17(3) to the people supplied by the system at the specific sampling site from which the sample was taken (e.g., the occupants of the building where the tap was sampled).

(ii) The supplier must distribute the consumer notice as soon as possible but no later than the following timeframes:

(A) For individual samples that are less than or equal to (≤) 0.015 mg/L of lead, no later than 30 days after the supplier learns of the tap sample results.

(B) For individual samples that are greater than (>) 0.015 mg/L of lead, as soon as possible but no later than three calendar days after the supplier learns of the tap sample results.

(iii) The supplier must include all of the following information in the consumer notice:

(A) The lead tap sample result(s) for the tap that was tested.

(B) The action level, MCLG, and the definitions for these terms.

(C) An explanation of the health effects of lead.

(D) A list of steps that the consumer can take to reduce exposure to lead in their drinking water.

(E) System contact information.

(iv) The supplier must distribute the consumer notice in the following manner:

(A) For individual samples that are greater than (>) 0.015 mg/L of lead, the supplier must deliver the notice either electronically or by phone, hand delivery, mail, or another Department-approved method.

(I) If the supplier is mailing the notification, the supplier must ensure the letters containing the consumer notice are postmarked within three days after the supplier learns of the tap sample result.

(B) For individual samples that are less than or equal to (≤) 0.015 mg/L, the supplier must deliver the notice by mail, hand delivery, or another Department-approved method.

(I) For non-transient, non-community water systems, the Department may allow the supplier to post the results on a bulletin board in the facility to allow users to review the information.

(v) No later than three months after the end of each monitoring period, the supplier must submit a sample copy of the consumer notice along with a certification that the notice has been distributed as specified in this section, 11.17(3)(h).

(i) Find-and-Fix Assessment for Results Above the Lead Action Level

(i) When a sample result is greater than (>) the lead action level at a sample site during tap sampling under 11.17(3)(d), the supplier must conduct the following "find-and-fix" steps:

(A) No later than five days after receiving a sample result above the lead action level, the supplier must collect samples from a new water quality parameter site that is on the same size water main in the same pressure zone and located within a half mile of the tap sample site that exceeds the action level.

(I) For systems without corrosion control treatment serving less than (<) 10,000 people, the supplier can collect samples up to 14 days after receiving a result above the lead action level.

(II) The supplier may conduct monitoring at an existing water quality parameter location if the location requirements specified in 11.17(3)(i)(i)(A) are met.

(III) If the supplier is required to meet optimal water quality parameters and does not have an existing water quality parameter location that meets the location requirements specified in 11.17(3)(i)(i)(A), the supplier must add the new site to the minimum number of sites specified in 11.17(5)(b).

(a) Sites must be added until a system has twice the minimum number of sites listed in Table 11.17-VI.

(b) When a system exceeds the upper threshold for the number of sites, the Department has discretion to determine if the newer site can better assess the effectiveness of the corrosion control treatment and to remove existing sites during sanitary survey evaluation of optimal corrosion control treatment.

(IV) The supplier must collect samples at the identified site for the following parameters:

(a) pH.

(b) Alkalinity.

(c) Orthophosphate (as PO4), when an inhibitor containing an orthophosphate compound is used.

(d) Silica, when an inhibitor containing a silicate compound is used.

(B) No later than 30 days after receiving a sample result above the lead action level, the supplier must collect a follow-up lead sample from the sample site.

(I) The supplier may use different sample volumes or different sample collection procedures to assess the source of elevated lead levels.

(II) Follow-up lead sample results are not included in the 90th percentile calculation.

(III) If the supplier is unable to collect a follow-up sample at a site, the supplier must provide documentation to the Department, explaining why it was unable to collect a follow-up sample.

(C) No later than six months after the end of the tap sampling period in which the site(s) exceeded the lead action level, the supplier must evaluate the results of the monitoring and submit a recommendation to the Department.

(I) The recommendation must determine if either localized or centralized adjustment of the optimal corrosion control treatment, including modification of corrosion control treatment, or other distribution system actions are necessary, such as flushing to reduce water age.

(II) The recommendation must include the cause of the elevated lead level, if known from the site assessment, if the supplier is not recommending any adjustment of corrosion control treatment or other distribution system actions.

(III) The supplier is not required to submit a treatment recommendation for find-and-fix if the supplier is optimizing or re-optimizing optimal corrosion control under 11.17(4).

(D) The Department must approve the treatment recommendation or specify an alternative approach within six months of completion of 11.17(3)(i)(i)(C).

(E) If the Department-approved treatment recommendation requires the supplier to adjust the optimal corrosion control treatment process, the supplier must complete modifications to its corrosion control treatment within 12 months after completion of 11.17(3)(i)(i)(D). Systems without corrosion control treatment required to install optimal corrosion control treatment must follow the schedule specified in 11.17(4)(c).

(F) If the supplier is adjusting its optimal corrosion control treatment, the supplier must complete follow-up sampling as specified in 11.17(3)(d)(iii) and 11.17(5)(f) within 12 months after completion of 11.17(3)(i)(i)(E).

(G) If the supplier is adjusting its optimal corrosion control treatment, the Department must review the supplier's modification of corrosion control treatment and designate optimal water quality parameters under 11.17(4)(d)(v) within six months of completion of 11.17(3)(i)(F).

(H) If the supplier is adjusting its optimal corrosion control treatment, the supplier must operate in compliance with the Department-designated optimal water quality parameters and continue to conduct tap sampling as specified in 11.17(3)(d) and water quality parameter monitoring as specified in 11.17(5)(g) or 11.17(5)(h).

(ii) By no later than July 1 of each calendar year, the supplier must provide the following find-and-fix information for actions conducted in the previous calendar year to the Department and local public health agencies by mail or another Department-approved method:

(A) The location of the tap sample site that exceeded 0.015 mg/L.

(B) The result of the initial tap sample.

(C) The result of the follow-up tap sample.

(D) The result of water quality parameter monitoring; and

(E) A description of any distribution system management actions or corrosion control treatment adjustments made.

(iii) The supplier must submit certification to the Department no later than July 1 of each year that the required find-and-fix information specified in 11.17(3)(i)(ii) was delivered to the appropriate local public health agencies for the previous calendar year.

(j) Public Availability of Tap Monitoring Results Used in the 90th Percentile Calculation

(i) The supplier must make available to the public the results of compliance tap sampling data, including data used in the 90th percentile calculation under 11.17(3)(b), within 60 days of the end of the applicable tap sampling period.

(A) Large systems must make the monitoring results available in a digital format.

(B) Small and medium systems must make the monitoring results available in either a written or digital format.

(C) The supplier must retain tap sampling monitoring data for no less than 12 years.

(D) The supplier is not required to make addresses of the sites where tap samples were collected publicly available.

(k) Response to an Action Level Exceedance for Lead

(i) In the event of a lead action level exceedance based on the 90th percentile calculation for sampling conducted under 11.17(3)(d), the supplier must:

(A) Notify the Department of the exceedance and initiate consultation as soon as possible but no later than 24 hours after the exceedance occurs.

(B) Distribute Tier 1 public notice as specified in 11.33.

(l) Reporting Requirements for Lead and Copper Tap Sampling

(i) By the start of the first applicable tap sampling monitoring period as specified in 11.17(3)(d), the supplier must submit the following:

(A) A sample site plan in accordance with 11.17(3)(a), including a list of tap sample site locations identified from the inventory as specified in 11.17(2)(a), and a list a tap sampling water quality parameter sites selected under 11.17(5)(b), if applicable.

(I) The sample site plan must be updated and submitted to the Department prior to any changes to sample site locations.

(II) The Department may require modifications to the sample site plan as necessary.

(III) For systems with lead service lines with insufficient lead service line sites to complete its sampling pool, the supplier must submit documentation in support of the conclusion that there are an insufficient number of lead service line sites meeting the criteria specified in Table 11.17-I.

(B) For suppliers that allow residents to collect first-draw or fifth-liter tap samples, a copy of the tap sampling protocol provided to individuals who are sampling.

(I) If the supplier intends to modify its tap sampling protocol, the supplier must submit the updated version of the protocol to the Department for review and approval no later than 60 days prior to use.

(II) The Department shall verify that wide-mouth collection bottles are used and recommendations for pre-stagnation flushing and aerator cleaning or removal prior to sample collection are not included pursuant to 11.17(3)(c)(i).

(ii) No later than the 10th of the month following the end of each monitoring period, the supplier must submit all of the following:

(A) Lead and copper tap sample results collected under 11.17(3)(d), including the location of each site and the criteria for which the site was selected.

(I) If a site was sampled during the current monitoring period that was not sampled during previous monitoring periods, the supplier must submit an explanation for the change in sample site(s).

(B) Additional lead and copper tap samples collected under 11.17(3)(e), including service line and plumbing material information.

(C) Follow-up lead and copper tap samples and water quality parameter samples collected as part of the find-and-fix steps under 11.17(3)(i), including the location of each site.

(I) The supplier must include information on the number of customer refusals or non-responses for follow-up sampling under 11.17(3)(i), if applicable, and provide information on the accuracy of the refusals or non-responses.

(D) The 90th percentile calculations for the lead and copper tap sample results.

(iii) The supplier is not required to report the 90th percentile lead and copper levels if all of the following conditions are met:

(A) The Department has notified the supplier that the Department will calculate the 90th percentile lead and copper levels based on the lead and copper tap sample results submitted.

(B) By no later than the 10th of the month following the end of each applicable tap sampling monitoring period, the supplier submits all of the following information:

(I) The results of all lead and copper tap samples.

(II) The location of each site.

(III) The tier level and criteria used to select the site.

(IV) A list of the sites that were sampled during the current monitoring period that were not sampled during previous monitoring periods, and an explanation for the change in sample sites.

(C) The Department has submitted the results of the 90th percentile lead and copper calculations, in writing, to the supplier within 15 days of the end of the tap sampling period.

(iv) For a non-transient, non-community water system, or a community water system meeting the criteria specified in 11.17(3)(c)(i)(I), that does not have enough taps that can provide first-draw or fifth-liter samples, the supplier must:

(A) By no later than the start of the first applicable monitoring period, submit to the Department the standing times and tap locations for the non-first-draw tap samples used to complete the sampling pool.

11.17(4) Corrosion Control Requirements

(a) General Requirements

(i) The supplier must install and operate corrosion control treatment in accordance with this section, 11.17(4), and that meets the definition of optimal corrosion control treatment specified in 11.17(1)(r).

(A) If the system is deemed to have optimal corrosion control under 11.17(4)(b), the supplier is not required to install and operate corrosion control treatment.

(ii) For systems that comply with the applicable corrosion control treatment requirements specified by the Department under 11.17(4), the supplier is deemed in compliance with the treatment requirement specified in 11.17(4)(a)(i).

(iii) For small community or non-transient, non-community water systems that comply with the applicable small system compliance flexibility requirements specified by the Department under 11.17(4)(c), 11.17(4)(d), and 11.17(4)(i), the supplier is deemed to be in compliance with the treatment requirement specified in 11.17(4)(a)(i).

(iv) The supplier must notify the Department in writing pursuant to 11.17(4)(j) of any upcoming long-term change in treatment or addition of a new source as described in 11.17(4)(j).

(v) The Department must evaluate, review, designate, and/or approve the supplier's corrosion control treatment in accordance with procedures set forth in 11.17(4) and 40 CFR 141, Subpart I, and 40 CFR 142.

(b) Criteria for Being Deemed to Have Optimal Corrosion Control

(i) The supplier is deemed to have optimal corrosion control if one of the following criteria are met:

(A) A small or medium system without corrosion control treatment is deemed to have optimal corrosion control if the supplier does not exceed the lead action level and copper action level during two consecutive six-month tap sampling monitoring periods and thereafter remains at or below the lead trigger level and copper action level in all tap sampling periods conducted in accordance with 11.17(3)(d).

(B) For small or medium systems with corrosion control treatment, the supplier is deemed to have optimal corrosion control treatment if the supplier does not exceed the lead trigger level and copper action level during two consecutive six-month tap sampling monitoring periods and thereafter remains at or below the lead trigger level and copper action level in all tap sampling periods conducted in accordance with 11.17(3)(d).

(I) For small or medium systems with corrosion control treatment that exceed the lead trigger level but do not exceed the lead and copper action levels during two consecutive six-month tap sampling monitoring periods and thereafter remain at or below the lead and copper action levels in all tap sampling periods conducted in accordance with 11.17(3)(d), the supplier is deemed to have re-optimized optimal corrosion control treatment if the supplier meets the requirements of 11.17(4).

(II) Where the Department has set optimal water quality parameters under 11.17(4)(c) or 11.17(4)(d), the supplier is not eligible to be deemed to have optimized or re-optimized optimal corrosion control treatment.

(C) For all systems, the supplier is deemed to have optimized or re-optimized corrosion control if the supplier submits results of tap water monitoring in accordance with 11.17(3)(d) demonstrating that the 90th percentile tap water lead level is less than or equal to (≤) the lead practical quantitation level of 0.005 mg/L and does not exceed the copper action level for two consecutive six-month tap sampling monitoring periods.

(I) Where the Department has set optimal water quality parameters under 11.17(4)(c) or 11.17(4)(d), the supplier is not eligible to be deemed to have optimized or re-optimized optimal corrosion control treatment.

(II) If the supplier's 90th percentile tap sample results ever exceed the lead practical quantitation level of 0.005 mg/L or the copper action level during any tap sampling period, the supplier is no longer eligible to be deemed to have optimized corrosion control without first completing the treatment steps specified in 11.17(4)(c), or for systems subject to 11.17(4)(i)(vi)(A)(II), the treatment steps specified in 11.17(4)(d).

(III) If the supplier is deemed to have optimized corrosion control in accordance with 11.17(4)(b)(i)(C), the supplier must continue collecting lead and copper tap samples no less frequently than once every three calendar years at the reduced number of sites specified in Table 11.17-IV and collecting samples at the times and locations specified in 11.17(3)(d).

(ii) If the supplier is deemed to have optimal corrosion control treatment, as defined in 11.17(1)(r) and as specified in 11.17(4)(b)(i)(A-C), and has corrosion control treatment in

place without having optimal water quality parameters set by the Department, the supplier must continue to operate and maintain that treatment and meet any additional requirements that the Department determines to be appropriate to ensure optimal corrosion control treatment is maintained.

(c) Treatment Steps and Deadlines for Systems Without Corrosion Control Treatment

A supplier without corrosion control treatment (i.e., does not have Department-designated optimal water quality parameters) is required to complete the corrosion control steps for optimized corrosion control treatment according to the steps and deadlines specified in 11.17(4)(c) if no longer deemed to have optimal corrosion control under 11.17(4)(b), unless the Department has approved an alternative compliance option under 11.17(4)(i).

(i) The supplier must recommend optimal corrosion control treatment in the following manner and by the specified deadlines:

(A) For large systems without corrosion control treatment with 90th percentile results as calculated in accordance with 11.17(3)(b) that exceed either the lead practical quantitation level of 0.005 mg/L or the copper action level, the supplier must complete one of the following by the specified deadlines:

(I) For systems with lead service lines, the supplier must harvest lead pipes from the distribution system and construct flow-through pipe loops and operate the loops with finished water within 12 months after the end of the tap sampling period and then complete the corrosion control studies specified in 11.17(4)(e) within 18 months.

(a) The supplier must complete harvesting of lead pipes and the corrosion control studies within 30 months after the end of the tap sampling period that exceeds either the lead practical quantitation level of 0.005 mg/L or the copper action level.

(II) For systems without lead service lines, the supplier must complete the corrosion control studies as specified in 11.17(4)(e) within 18 months after the end of the tap sampling period that exceeds either the lead practical quantitation level of 0.005 mg/L or the copper action level.

(B) For small and medium systems with lead service lines that exceed the lead action level, the supplier must harvest lead pipes from the distribution system and construct flow-through pipe loops and operate the loops with finished water within 12 months after the end of the tap sampling period and then complete the corrosion control studies as specified in 11.17(4)(e) within 18 months.

(I) The supplier must complete harvesting of lead pipes and the corrosion control studies within 30 months after the end of the tap sampling period that exceeds the lead action level.

(C) For small and medium systems without corrosion control treatment that exceed the copper action level and for medium systems without corrosion control treatment that exceed the lead trigger level, the supplier must recommend, based on the results of lead and copper tap sampling and water quality parameter monitoring, one or more corrosion control treatments specified in 11.17(4)(e)(i)(A) that will most likely provide optimal corrosion control for the system no later than six months after the end of the tap sampling period that exceeds the lead trigger level or copper action level.

(I) No later than 12 months after the end of the tap sampling period that exceeds the lead trigger level or copper action level, the Department may notify the supplier in writing of the requirement to perform corrosion control studies as specified in 11.17(4)(e).

(a) If required to perform corrosion control studies, the supplier must complete the corrosion control studies no later than 18 months after the Department makes this determination.

(D) For small community water systems and non-transient, non-community water systems without corrosion control treatment that exceed the lead trigger level but not the copper action level that choose to pursue a small water system compliance flexibility option, the supplier must recommend an option in accordance with 11.17(4)(i) based on the results of lead tap sampling and water quality parameter monitoring, including recommending one or more corrosion control treatments specified in 11.17(4)(e)(i)(A) that will most likely provide optimal corrosion control for the system.

(I) The supplier must submit the recommendation(s) no later than six months after the end of the tap sampling period that exceeds the lead trigger level.

(II) If the Department approves corrosion control treatment as a compliance option under 11.17(4)(i), the supplier must complete the corrosion control treatment steps specified in 11.17(4)(c).

(ii) The Department must designate optimal corrosion control treatment under the following conditions:

(A) When designating optimal corrosion control treatment, the Department must consider the effects that additional corrosion control treatment will have on water quality parameters and on other drinking water quality treatment processes.

(B) If the Department requests additional information, including additional monitoring, to aid its review, the supplier must provide the information within the timeframes specified by the Department.

(C) Based upon considerations of available information including, where applicable, studies conducted under 11.17(4)(e)(i) and/or the supplier's recommended corrosion control treatment option, the Department must either approve the corrosion control treatment option recommended by the supplier or designate alternative corrosion control treatment(s) from among those listed in 11.17(4)(e)(i)(A)(I-IV).

(D) The Department must notify the supplier of its designation of optimal corrosion control treatment in writing and explain the basis for this determination. The Department must designate optimal corrosion control treatment by the following deadlines:

(I) For systems required to perform corrosion control studies as specified in 11.17(4)(e), the Department must designate optimal corrosion control treatment within six months after completion of the corrosion control studies.

(II) For medium systems required to recommend treatment as specified in 11.17(4)(c)(i)(C) and not required to perform corrosion control studies under 11.17(4)(c)(i)(C)(I), the Department must designate treatment within 18 months after the end of the tap sampling period during which the supplier exceeds the lead trigger level or copper action level.

(III) For small systems required to recommend treatment as specified in 11.17(4)(c)(i)(C) or 11.17(4)(c)(i)(D) and not required to perform corrosion control studies under 11.17(4)(c)(i)(C)(I), the Department must designate treatment within 24 months after the end of the tap sampling period during which the supplier exceeds the lead trigger level or copper action level.

(iii) No later than 24 months after the Department approves optimal corrosion control treatment, the supplier must:

(A) Properly install and operate the designated treatment; and

(B) Submit certification that the Department-approved optimal corrosion control treatment was installed.

(iv) Discontinuation of corrosion control treatment steps. For small and medium systems, the supplier may discontinue the corrosion control treatment steps beginning with 11.17(4)(c)(iii), if one of the following conditions are met:

(A) The supplier has exceeded the lead trigger level, but has not exceeded the lead or copper action level.

(I) If the supplier subsequently exceeds the lead or copper action level, the supplier must install Department-designated corrosion control treatment as specified in 11.17(4)(c)(iii).

(B) The supplier has exceeded the lead or copper action level, but prior to the deadline to install treatment, the supplier does not exceed the lead or copper action levels during each of two consecutive six-month tap sample monitoring periods conducted in accordance with 11.17(3)(d).

(I) If the supplier installs optimal corrosion control treatment, the supplier must complete the activities specified in 11.17(4)(c)(v-vii).

(II) If the supplier does not complete 11.17(4)(c)(iii) upon meeting the condition specified in 11.17(4)(c)(iv)(B) and thereafter exceeds either the lead or copper action level, the supplier is not permitted to discontinue the steps a second time and must complete the applicable treatment steps beginning with 11.17(4)(c)(iii).

(a) The Department may require the supplier to repeat treatment steps previously completed by the supplier when the Department determines that it is necessary in order for the supplier to implement the treatment requirements specified in 11.17(4). The Department must notify the supplier in writing of such a determination and explain the basis for its decision.

(v) No later than 12 months after installation of corrosion control treatment as specified in 11.17(4)(c)(iii), the supplier must complete follow-up sampling consisting of:

(A) Water quality parameter monitoring as specified in 11.17(5)(f); and

(B) Standard lead and copper tap sample monitoring as specified in 11.17(3)(d).

(vi) No later than six months after the supplier completes water quality parameter monitoring and collects the lead and copper tap samples as specified in 11.17(4)(c)(v), the Department shall evaluate the results of all lead and copper tap sampling and water quality parameter monitoring submitted by the supplier and determine if the supplier has properly installed and operated optimal corrosion control treatment designated by the Department.

(A) Upon reviewing the results of tap sampling and water quality parameter monitoring conducted by the supplier, both before and after the supplier installs optimal corrosion control treatment, the Department must designate:

(I) A minimum value or a range of values for pH measured at each entry point.

(II) A minimum pH value measured in all tap samples. Such a value must be greater than or equal to (≥) 7.0, unless the Department determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.

(III) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for orthophosphate (as PO_4) or silicate, measured at each entry point.

(IV) If a corrosion inhibitor is used, a minimum orthophosphate or silicate concentration measured in all tap samples that the Department determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system.

(a) When orthophosphate is used, such an orthophosphate concentration must be greater than or equal to (≥) 0.5 mg/L (as PO_4) unless the Department determines that meeting the applicable minimum orthophosphate residual is not technologically feasible or is not necessary for optimal corrosion control treatment.

(V) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point and in all tap samples.

(VI) The values for the applicable water quality control parameters as specified in 11.17(4)(c)(vi)(A)(I-V) must be those that the Department determines to reflect optimal corrosion control treatment for the system. The Department may designate values for additional water quality control parameters determined by the Department to reflect optimal corrosion control treatment for the system.

(B) The Department must notify the supplier in writing of these determinations and explain the basis for its decisions.

(vii) The supplier must continue to operate and maintain optimal corrosion control treatment as specified in 11.17(4)(h).

(d) Treatment Requirements for Systems Re-Optimizing Corrosion Control Treatment

A supplier with corrosion control treatment (i.e., has Department-designated optimal water quality parameters) is required to complete the corrosion control steps for re-optimized corrosion control treatment according to the steps and deadlines specified in 11.17(4)(d) when the supplier exceeds the lead trigger level or copper action level or is otherwise required by the Department, unless the Department has approved an alternative compliance option under 11.17(4)(i).

(i) The supplier must recommend re-optimized corrosion control treatment in the following manner and by the specified deadlines:

(A) For systems with corrosion control treatment, the supplier must recommend re-optimized corrosion control treatment from the treatment options specified in 11.17(4)(e)(i)(A) within six months after the end of the tap sampling period, if any of the following occurs:

(I) The supplier exceeds the lead trigger level or copper action level and is not covered under 11.17(4)(d)(i)(B).

(II) The Department notifies the supplier in writing of the requirement to re-optimize corrosion control treatment on the condition the supplier is a large system with 90^{th} percentile results as calculated in accordance with 11.17(3)(b) that exceed the lead practical quantitation level but do not exceed the lead trigger level or the copper action level.

(B) For systems with lead service lines that exceed the lead action level, the supplier must harvest lead pipes from the distribution system and construct flow-through pipe loops and operate the loops with finished water within 12 months after the end of the tap sampling period and then complete the corrosion control studies as specified in 11.17(4)(e) within 18 months.

(I) The supplier must complete harvesting of lead pipes and corrosion control studies within 30 months after the end of the tap sampling period that exceeded the lead action level.

(C) For systems that exceed the lead trigger level, but not the lead or copper action level, the Department may approve modifications of the existing corrosion control treatment without a study.

(I) The Department must specify re-optimized corrosion control treatment within six months of receiving the supplier's treatment recommendation under 11.17(4)(d)(A).

(II) The supplier must complete modifications to corrosion control treatment to have re-optimized corrosion control treatment within six months of the Department specifying re-optimized corrosion control under 11.17(4)(d)(i)(C)(I).

(D) For large systems, the supplier must conduct the corrosion control studies as specified in 11.17(4)(e) for re-optimization within 18 months after the tap sampling period in which the supplier exceeded the lead trigger level or copper action level, unless the Department has approved modifications under 11.17(4)(d)(i)(C).

(E) For small and medium systems with corrosion control treatment that exceed the lead trigger level or the copper action level, the Department may require the supplier to perform corrosion control studies as specified in 11.17(4)(e).

(I) The Department must notify the supplier in writing of the requirement to complete the corrosion control studies as specified in 11.17(4)(e) within 12 months after the end of the tap sampling period in which the supplier exceeded the lead trigger level or copper action level.

(a) If required to perform corrosion control studies, the supplier must complete the corrosion control studies no later than 18 months after the Department makes this determination.

(ii) The Department must designate re-optimized corrosion control treatment under the following conditions:

(A) When designating re-optimized corrosion control treatment, the Department must consider the effects that additional corrosion control treatment will have on water quality parameters and on other drinking water quality treatment processes.

(B) If the Department requests additional information to aid its review, the supplier must provide the requested information within the timeframes specified by the Department.

(C) Based upon considerations of available information including, where applicable, studies conducted under 11.17(4)(e) and/or the supplier's recommended corrosion control treatment option, the Department must either approve the corrosion control treatment option recommended by the supplier or designate alternative corrosion control treatment(s) from among those listed in 11.17(4)(e)(i)(A)(I-IV).

(D) The Department must notify the supplier of its designation of optimal corrosion control treatment in writing and explain the basis for this determination. The Department must designate optimal corrosion control treatment within the following timeframes:

(I) For systems required to perform corrosion control studies as specified in 11.17(4)(e), the Department must designate optimal corrosion control treatment within six months after completion of the corrosion control studies.

(II) For medium systems required to recommend treatment as specified in 11.17(4)(d)(i)(A) and not required to perform corrosion control studies under 11.17(4)(d)(i)(E), the Department must designate treatment within 12 months after the end of the tap sampling period during which the supplier exceeds the lead trigger level or copper action level.

(III) For small systems required to recommend treatment as specified in 11.17(4)(d)(i)(A) and not required to perform corrosion control studies under 11.17(4)(d)(i)(E), the Department must designate treatment within 18 months after the end of the tap sampling period during which the supplier exceeds the lead trigger level or copper action level.

(iii) No later than 12 months after the Department approves re-optimized corrosion control treatment, the supplier must:

(A) Properly install and operate the approved treatment.

(B) Submit certification to the Department that the Department-approved re-optimized corrosion control treatment was installed.

(iv) No later than 12 months after installation of corrosion control treatment in 11.17(4)(d)(iii), the supplier must complete follow-up sampling consisting of:

(A) Water quality parameter monitoring as specified in 11.17(5)(f); and

(B) Standard lead and copper tap sample monitoring as specified in 11.17(3)(d).

(v) No later than six months after the supplier completes water quality parameter monitoring and collects the lead and copper tap samples as specified in 11.17(4)(d)(iv), the Department shall evaluate the results of all lead and copper tap sampling and water quality parameter sampling submitted by the supplier and determine if the supplier has properly installed and operated optimal corrosion control treatment designated by the Department.

(A) Upon reviewing the results of tap sampling and water quality parameter monitoring conducted by the supplier, both before and after the supplier installs optimal corrosion control treatment, the Department must designate:

(I) A minimum value or a range of values for pH measured at each entry point.

(II) A minimum pH value measured in all tap samples. Such a value must be greater than or equal to (≥) 7.0, unless the Department determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.

(III) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for orthophosphate (as PO_4) or silicate, measured at each entry point.

(IV) If a corrosion inhibitor is used, a minimum orthophosphate or silicate concentration measured in all tap samples that the Department determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system.

(a) When orthophosphate is used, such an orthophosphate concentration shall be greater than or equal to (≥) 1.0 mg/L (as PO_4), unless the Department determines that meeting the applicable minimum orthophosphate residual is not technologically feasible or is not necessary for optimal corrosion control treatment.

(V) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point and in all tap samples.

(VI) The values for the applicable water quality parameters, specified in 11.17(4)(d)(v)(A)(I-V), must be those that the Department determines to reflect optimal corrosion control treatment for the water system. The Department may designate values for additional water quality parameters

determined by the Department to reflect optimal corrosion control treatment for the system.

(B) The Department must notify the supplier in writing of these determinations and explain the basis for its decisions.

(vi) The supplier must continue to operate and maintain re-optimized optimal corrosion control treatment as specified in 11.17(4)(h).

(e) Corrosion Control Treatment Studies Requirements

(i) Corrosion control treatment studies must include all of the following:

(A) An evaluation of the effectiveness of each of the following treatments, and if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for the system:

(I) Alkalinity and pH adjustment.

(II) The addition of an orthophosphate- or silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective corrosion inhibitor residual concentration in all test samples.

(III) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain an orthophosphate residual concentration of 1 mg/L (as PO_4) in all test samples; and

(IV) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain an orthophosphate residual concentration of 3 mg/L (as PO_4) in all test samples.

(B) An evaluation of each of the corrosion control treatments using either:

(I) Pipe rig/loop tests.

(II) Metal coupon tests.

(III) Partial-system tests; or

(IV) Analyses based on documented analogous treatments with other systems of similar size, water chemistry, and distribution system configurations.

(C) For systems with lead service lines, the supplier must complete pipe rig/loop studies using harvested lead service lines from their distribution system to assess the effectiveness of corrosion control treatment options on the existing pipe scale.

(I) The supplier may use metal coupon tests as a screen to reduce the number of options that are evaluated using pipe rig/loops to the current conditions and two options.

(a) The supplier must not exclude treatment strategies from the studies based on constraints identified in 11.17(4)(e)(i)(E) or effects identified in 11.17(4)(e)(i)(F).

(D) Monitoring of the following water quality parameters before and after any test conducted under 11.17(4)(e)(i)(B)(I-III) to evaluate the effectiveness of the corrosion control treatments:

(I) Lead.

(II) Copper.

(III) pH.

(IV) Alkalinity.

(V) Orthophosphate as PO_4 (when an orthophosphate-based inhibitor is used).

(VI) Silicate (when a silicate-based inhibitor is used).

(E) An identification of all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and documentation of such constraints with one of the following:

(I) Data and documentation showing that a particular corrosion control treatment has adversely affected other drinking water treatment processes when used by another water system with comparable water quality characteristics.

(a) Suppliers using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options must not exclude treatment strategies from the studies based on the constraints identified in this section.

(II) Data and documentation demonstrating that the supplier has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other drinking water quality treatment processes.

(a) Suppliers using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options must not exclude treatment strategies from the studies based on the constraints identified in this section unless the treatment was found to be ineffective in a previous pipe loop/rig study.

(F) An evaluation of the effect of the chemicals used for corrosion control treatment on other drinking water quality treatment processes.

(G) A recommendation, in writing, based on an analysis of the data generated during each evaluation, of the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for the system.

(I) The supplier must provide a rationale for its recommendation along with all supporting documentation specified in 11.17(4)(e)(i)(A-F).

(f) Modification of Department Treatment Decisions for Optimal Corrosion Control and Re-Optimized Corrosion Control

(i) To ensure optimal corrosion control, the Department may modify its determination of optimal corrosion control treatment or optimal water quality parameters specified in 11.17(4)(c) or 11.17(4)(d) where it concludes that such change is necessary to ensure that the supplier continues to optimize corrosion control treatment.

(A) The supplier, or other interested party, may request in writing that the Department modify optimal corrosion control treatment or optimal water quality parameters. The request must explain why the modification is appropriate and include supporting documentation.

(B) If the Department modifies the determination, the Department shall notify the supplier in writing of the modified treatment requirements and/or water quality parameters and include all of the following information:

(I) The basis for the decision; and

(II) An implementation schedule for the supplier to complete the modifications for re-optimized corrosion control treatment.

(g) Treatment Decisions by EPA in Lieu of the Department on Optimal Corrosion Control Treatment and Re-Optimized Corrosion Control Treatment

(i) Pursuant to the procedures in 40 CFR 142.19, the EPA Regional Administrator may review optimal corrosion control treatment determinations made by the Department in section 11.17(4) or under 40 CFR 141.82(d)(1), (2), (f), or (h) and issue Federal treatment determinations consistent with the requirements of 11.17(4) or 40 CFR 141.82(d)(1), (2), (f), or (h) where the Regional Administrator finds that:

(A) The Department has failed to issue a treatment determination by the applicable deadlines specified in 11.17(4)(c), 11.17(4)(d), or 11.17(4)(i).

(B) The Department has abused its discretion in a substantial number of cases or in cases affecting a substantial population; or

(C) The technical aspects of the Department's determination would be indefensible in a Federal enforcement action taken against the supplier.

(h) Requirements for the Continued Operation and Maintenance of Optimal Corrosion Control Treatment

(i) All suppliers optimizing or re-optimizing corrosion control must continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the Department.

(ii) The supplier must operate in compliance with the Department-designated optimal water quality parameters and continue to conduct tap sampling as specified in 11.17(3)(d) and water quality parameter monitoring under 11.17(5).

(iii) The supplier must continue to operate and/or maintain optimal corrosion control treatment, including consecutive systems that distribute water that has been treated to control corrosion by another supplier, and any supplier with corrosion control treatment, optimal corrosion control treatment, or re-optimized corrosion control treatment that is not required to monitor water quality parameters under 11.17(5).

(iv) To demonstrate the continued operation and maintenance of optimal corrosion control treatment, the supplier must comply with the treatment technique requirements for water quality parameters as specified in 11.17(5)(k) and collect lead and copper tap samples as specified in 11.17(3)(d).

(A) The supplier must begin maintaining water quality parameters on the date that the Department notifies the supplier of the Department-specified optimal values for corrosion control.

(i) Small Water System Compliance Flexibility

(i) For small community water systems and non-transient, non-community water systems that exceed the lead trigger level but do not exceed the copper action level, the supplier must complete and submit to the Department the following no later than six months after the end of the tap sampling period in which the exceedance occurred:

(A) A recommendation for one or more corrosion control treatment options specified in 11.17(4)(e)(i)(A) that will most likely provide optimal corrosion control for the system.

(I) For systems with existing corrosion control treatment in place, the supplier must continue to operate and maintain optimal corrosion control treatment until the Department determines in writing that it is no longer necessary, and meet any requirements that the Department determines to be appropriate before implementing a Department-approved compliance option as described in 11.17(4)(i)(iv).

(B) A recommendation of the compliance option, based on an evaluation of the compliance options specified in 11.17(4)(i)(i)(B)(I-IV), the supplier will implement if a subsequent lead action level exceedance occurs.

(I) Corrosion control treatment recommended in 11.17(4)(i)(i)(A) and described in 11.17(4)(i)(vi)(A).

(II) Lead service line replacement described in 11.17(4)(i)(vi)(B).

(III) POU devices described in 11.17(4)(i)(vi)(C).

(IV) Replacement of lead-bearing plumbing described in 11.17(4)(i)(vi)(D).

(ii) The Department must approve the compliance option recommendation or designate an alternative from the compliance options specified in 11.17(4)(i)(i)(B)(I-IV) within six months of the recommendation by the supplier.

(iii) If the supplier subsequently exceeds the lead action level, the supplier must implement the compliance option approved by the Department in 11.17(4)(i)(ii).

(iv) If the supplier exceeds the lead action level, but has not previously exceeded the lead trigger level, and does not exceed the copper action level, the supplier must complete the actions specified in 11.17(4)(i)(i) and must implement the compliance option approved by the Department under 11.17(4)(i)(ii).

(v) If the supplier exceeds the lead trigger level after it has implemented a compliance option specified in 11.17(4)(i)(i)(B)(I-IV) and approved by the Department under 11.17(4)(i)(ii), the supplier must complete the steps specified in 11.17(4)(i)(i), and if it thereafter

exceeds the lead action level, it must implement the compliance option approved by the Department under 11.17(4)(i)(ii).

(vi) Description of small system compliance flexibility options.

(A) Corrosion control treatment. The supplier must install and maintain optimal corrosion control treatment in accordance with 11.17(4)(c-h).

(I) The supplier must install and maintain optimal corrosion control treatment even if the supplier's 90th percentile lead level is at or below the action level in future tap sampling monitoring periods.

(II) If the supplier has corrosion control treatment installed, the supplier must re-optimize its corrosion control treatment in accordance with 11.17(4)(d).

(III) Suppliers required by the Department to optimize or re-optimize corrosion control treatment must follow the schedules specified in 11.17(4)(c) or 11.17(4)(d), beginning with 11.17(4)(c)(iii) or 11.17(4)(d)(iii), unless the Department specifies optimal corrosion control treatment pursuant to either 11.17(4)(c)(ii)(D)(III) or 11.17(4)(d)(ii)(D)(III), as applicable.

(B) Lead service line replacement. For systems with lead service lines, the supplier must implement a full lead service line replacement program on a schedule approved by the Department but not to exceed 15 years.

(I) The supplier must begin lead service line replacement within one year after the Department's approval or designation of the compliance option.

(II) The supplier may not cease lead service line replacement even if the supplier's 90th percentile lead level is at or below the action level in future tap sampling monitoring periods.

(III) Lead service line replacement must be conducted in accordance with the requirements specified in 11.17(7)(f), 11.17(7)(h)(i)(D), 11.17(7)(h)(i)(F) and 11.17(7)(h)(i)(G).

(IV) The supplier must have no lead service lines, galvanized requiring replacement service lines, or "lead status unknown" service lines in its inventory by the end of its lead service line replacement program.

(C) Point-of-use devices. The supplier must install, maintain, and monitor POU devices in each household or building.

(I) For community water systems, the supplier must install POU devices as follows:

(a) At each household in the distribution system, install a minimum of one POU device (at one tap).

(b) At each non-residential building in the distribution system, install one POU device at every tap that is used for cooking and/or drinking.

(c) Installation must be completed according to a Department-specified schedule, but no later than one year after the Department's approval or designation of the compliance option.

(II) For non-transient, non-community water systems, the supplier must provide a POU device at every tap that is used for cooking and/or drinking.

(a) Installation must be completed according to a Department-specified schedule, but no later than three months after the Department's approval or designation of the compliance option.

(III) The supplier must continue with installation, maintenance, and monitoring of POU devices in each household or building even if the lead 90th percentile is at or below the action level in future tap sampling monitoring periods.

(IV) The POU device must be independently certified by a third party to meet the American National Standards Institute standard applicable to the specific type of POU unit to reduce lead in drinking water.

(V) The POU device must be maintained by the supplier according to manufacturer's recommendations to ensure continued effective filtration, including but not limited to changing filter cartridges and resolving any operational issues.

(a) POU devices must be equipped with mechanical warnings to ensure that customers are automatically notified of operational problems.

(b) The supplier must provide documentation to the Department to certify maintenance of the POU devices on an annual basis.

(VI) The supplier must monitor one-third of the POU devices each year and all POU devices must be monitored within a three-year cycle.

(a) First-draw tap samples collected under 11.17(4)(i)(vi)(C)(VI) must be taken after water passes through the POU device to assess its performance.

(b) Samples must be one-liter in volume and have had a minimum six-hour stagnation time.

(c) All samples must be less than or equal to (≤) the lead trigger level.

(d) No later than the 10th of the month following the end of each tap sampling monitoring period, the supplier must report the results from the tap sampling from POU devices to the Department.

(e) At any site where the sample result exceeds the lead trigger level, the supplier must document the problem and complete corrective action within 30 days. If the corrective action is not completed within 30 days, the supplier must provide

documentation to the Department within 30 days explaining why the supplier was unable to correct the issue.

(f) For any site where the sample result exceeds the lead trigger level, the supplier must reach out to the homeowner and/or building management no later than 24 hours after receiving the tap sample results.

(VII) The supplier must provide public education to consumers to inform them on proper use of POU devices to maximize the units' effectiveness in reducing lead levels in drinking water.

(a) The supplier must provide public education material at the time of POU device delivery.

(b) The supplier must distribute the public education materials in person, by mail, or by another Department-approved method to people at all locations where the supplier has delivered POU devices.

(VIII) The supplier must operate and maintain the POU devices until the supplier receives Department approval to select one of the other compliance flexibility options and implements it.

(D) Replacement of lead-bearing plumbing. If the supplier has control over all plumbing in its buildings, and has no unknown, galvanized, or lead service lines, the supplier must replace all plumbing that is not lead free in accordance with Section 1417 of the Safe Drinking Water Act, as amended by the Reduction of Lead in Drinking Water Act, and any future amendments applicable at the time of replacement.

(I) Replacement of all lead-bearing plumbing must be completed according to a Department-specified schedule, but no later than one year after the Department’s approval or designation of the compliance option.

(II) The supplier must provide certification to the Department that all lead-bearing material has been replaced within one year of the Department’s approval or designation of the compliance option.

(j) Reporting Requirements for a New Source or Long-Term Change in Water Treatment

(i) The Department must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the supplier.

(A) At a date specified by the Department, or if no specific date is specified by the Department, as soon as possible but no later than six months prior to the addition of a new source or any long-term treatment change, the supplier must submit written documentation to the Department describing the addition or change.

(B) The Department may require the supplier to take actions before or after the addition of a new source or long-term treatment change to ensure the supplier will operate and maintain optimal corrosion control treatment (e.g., additional water quality parameter monitoring, additional lead or copper tap sampling, and re-evaluation of corrosion control treatment).

(C) Examples of long-term treatment changes include but are not limited to:

(I) The addition of a new treatment process or modification of an existing treatment process including:

(a) Switching secondary disinfectants.

(b) Switching coagulants (e.g., alum to ferric chloride).

(c) Switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate).

(II) Dose changes to existing chemicals if the water system is planning long-term changes to its finished water pH or residual inhibitor concentration.

(D) Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes where a new source has not been added.

(k) Treatment Technique Violations and Response for Optimal Corrosion Control

(i) If the supplier fails to meet the corrosion control treatment requirements by the deadlines specified in 11.17(4), a treatment technique violation occurs.

(ii) In the event of an optimal corrosion control treatment technique violation, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs; and

(B) Distribute Tier 2 public notice as specified in 11.33.

11.17(5) Monitoring Requirements for Water Quality Parameters

(a) Applicability

(i) For all large water systems, the supplier must comply with the water quality parameter requirements specified in this section, 11.17(5).

(ii) For small and medium water systems that exceed the lead or copper action level, the supplier must comply with the water quality parameter requirements specified in this section, 11.17(5).

(iii) For small and medium water systems with corrosion control treatment that exceed the lead trigger level, the supplier must comply with the water quality parameter requirements specified in this section, 11.17(5).

(b) General Monitoring Requirements for Water Quality Parameters

(i) The supplier must monitor for water quality parameters at taps and at each entry point.

(A) The supplier must collect tap samples that are representative of water quality throughout the distribution system, taking into account the number of individuals supplied, the different sources of water, the different treatment methods used by the system, and seasonal variability.

(I) Tap sampling for water quality parameters is not required to be conducted at lead and copper tap sampling sites specified in 11.17(3)(a).

(II) The supplier must include tap sampling sites for water quality parameters in the supplier's sampling pool specified in 11.17(3)(a)(i). The supplier's sampling pool must be updated prior to changes to the sampling locations.

(B) The supplier must collect tap samples for the applicable water quality parameters from the minimum number of sites specified in Table 11.17-VI.

(C) For systems that add sites as a result of the "find-and-fix" requirements specified in 11.17(3)(i), the supplier must collect tap samples for applicable water quality parameters each monitoring period as specified in 11.17(5)(c-i) and must sample from the adjusted minimum number of sites.

(I) If the supplier is conducting water quality parameter monitoring at additional sites through "find-and-fix", the supplier must add those sites to the minimum number of sites specified in Table 11.17-VI unless they are monitoring at least twice the minimum number of sites.

TABLE 11.17-VI ROUTINE NUMBER OF WATER QUALITY PARAMETER TAP SAMPLE SITES

Population supplied	Minimum number of sites for water quality parameters	Find-and-Fix threshold for water quality parameters
Greater than (>) 100,000	25	50
10,001 to 100,000	10	20
3,301 to 10,000	3	6
501 to 3,300	2	4
101 to 500	1	2
Less than or equal to (≤) 100	1	2

(c) For Large Systems without Corrosion Control Treatment - Initial Monitoring Requirements for Water Quality Parameters

(i) For systems that become a large system, the supplier must monitor water quality parameters during two consecutive six-month compliance periods beginning no later than January 1 of the calendar year after the system becomes a large system.

(ii) For large systems that fail to maintain a 90th percentile lead level less than or equal to (≤) 0.005 mg/L, the supplier must monitor water quality parameters during two consecutive six-month compliance periods beginning no later than January 1 of the calendar year following the compliance period during which the 90th percentile lead level is greater than (>) 0.005 mg/L.

(iii) In each six-month compliance period, the supplier must monitor the following water quality parameters:

(A) At the routine number of tap sample sites specified in Table 11.17-VI, collect two samples for:

(I) pH.

(II) Alkalinity.

(B) At each entry point, collect two samples for:

(I) pH.

(II) Alkalinity.

(d) For Small and Medium Systems - Monitoring Requirements for Water Quality Parameters After an Action Level Exceedance

(i) The supplier must monitor for water quality parameters during two consecutive six-month compliance periods immediately following the end of the tap sampling period during which the lead or copper action level is exceeded.

(A) At the routine number of tap sample sites specified in Table 11.17-VI, collect two samples for:

(I) pH.

(II) Alkalinity.

(B) At each entry point, collect two samples for:

(I) pH.

(II) Alkalinity.

(e) For Systems without Designated Water Quality Parameters for Optimal Corrosion Control - Initial Monitoring Requirements for Water Quality Parameters After a Trigger Level Exceedance

(i) For systems that have corrosion control treatment installed for which the Department has not specified values for water quality parameters that reflect optimal corrosion control treatment, the supplier must monitor for water quality parameters during two consecutive six-month compliance periods immediately following the end of the tap sampling period during which the lead trigger level is exceeded.

(A) At the routine number of tap sample sites specified in Table 11.17-VI, collect two samples for:

(I) pH.

(II) Alkalinity.

(B) At each entry point, collect two samples for:

(I) pH.

(II) Alkalinity.

(f) Monitoring Requirements for Water Quality Parameters After Installation or Re-Optimization of Corrosion Control Treatment

(i) The supplier must monitor water quality parameters during two consecutive six-month compliance periods immediately following the installation or re-optimization of corrosion control treatment. In each six-month compliance period, the supplier must:

(A) Collect samples evenly throughout each six-month compliance period to reflect seasonal variability.

(B) At the routine number of tap sample sites specified in Table 11.17-VI, collect two samples for each of the following:

(I) pH.

(II) Alkalinity.

(III) Orthophosphate, when an inhibitor containing an orthophosphate compound is used.

(IV) Silica, when an inhibitor containing a silicate compound is used.

(C) At each entry point, collect at least one sample every two weeks (biweekly) for each of the following:

(I) pH.

(II) If alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration.

(III) If a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(D) For groundwater systems, the supplier may reduce entry point sampling to entry points that are representative of water quality and treatment conditions throughout the system.

(I) If water from groundwater sources without corrosion control treatment mixes with water from groundwater sources with corrosion control treatment, the supplier must monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment.

(II) Before starting reduced entry point monitoring, the supplier must submit written documentation identifying the selected representative entry points and information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system, including information on seasonal variability.

(ii) For small and medium water systems with corrosion control treatment for which the Department has not specified water quality parameters for optimal corrosion control that exceed the lead trigger level but not the lead or copper action levels, the Department may allow an alternative water quality parameter structure.

(g) <u>For Large Systems - Routine Monitoring After the Department Specifies Water Quality Parameters for Optimal Corrosion Control</u>

(i) After the Department specifies the values for the applicable water quality parameters that reflect optimal corrosion control treatment as specified in 11.17(4)(c)(vi) and 11.17(4)(d)(v), the supplier must monitor for the required water quality parameters every six months as specified in 11.17(5)(f)(i)(A-D).

(A) After the Department specifies the values reflecting optimal corrosion control, the supplier must begin monitoring in the first six-month compliance period, beginning either January 1 or July 1, whichever comes first.

(h) For Small and Medium Systems - Routine Monitoring after the Department Specifies Water Quality Parameters for Optimal Corrosion Control

(i) After the Department specifies values for the applicable water quality parameters that reflect optimal corrosion control as specified in 11.17(4)(c)(vi) and 11.17(4)(d)(v), the supplier must monitor water quality parameters every six months immediately following any tap sampling period during which the lead or copper action level is exceeded.

(A) The supplier must monitor the water quality parameters as specified in 11.17(5)(f)(i)(A-D).

(B) The supplier must continue to monitor water quality parameters until the lead and copper action levels and Department-specified values for water quality parameters reflecting optimal corrosion control are met in two consecutive six-month compliance periods.

(C) If the supplier is collecting lead and copper tap samples on a reduced monitoring frequency at the time of the action level exceedance, the supplier must begin monitoring for water quality parameters no later than the six-month compliance period beginning January 1 of the calendar year following the action level exceedance.

(ii) If the supplier exceeds the lead trigger level, but not the lead and copper action levels, the supplier must monitor the water quality parameters as specified in 11.17(5)(f)(i)(A-D) every six months until the lead trigger level is met for two consecutive six-month compliance periods.

(A) The Department may require the supplier to routinely monitor water quality parameters to demonstrate the continued operation and maintenance of optimal corrosion control.

(i) Reduced Monitoring Requirements for Water Quality Parameters at Taps

(i) For large systems, if the supplier has maintained Department-specified values for water quality parameters reflecting optimal corrosion control treatment as specified in 11.17(4)(c)(vi) and 11.17(4)(d)(v) and has met the lead trigger level during two consecutive six-month compliance periods, the supplier may collect two tap samples for each applicable water quality parameter from the reduced number of sites specified in Table 11.17-VII during each six-month compliance period.

TABLE 11.17-VII REDUCED NUMBER OF WATER QUALITY PARAMETER TAP SAMPLE SITES

Population supplied	Reduced number of sites for water quality parameters
Greater than (>) 100,000	10

10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
Less than or equal to (≤) 100	1

(ii) For large systems, and for small and medium water systems for which the Department has required routine water quality parameter monitoring as specified in 11.17(5)(h)(ii)(A), the supplier may be eligible for reduced tap monitoring frequency.

(A) The supplier may, at the reduced number of sites specified in Table 11.17-VII, collect two samples for each applicable water quality parameter annually if, during three consecutive years of monitoring, all of the following criteria are met:

(I) The 90th percentile does not exceed the lead trigger level.

(II) The 90th percentile does not exceed the copper action level.

(III) The Department-specified values for water quality parameters reflecting optimal corrosion control treatment have been maintained.

(IV) The supplier must begin annual monitoring in the calendar year immediately following the end of the third consecutive year of six-month monitoring.

(B) The supplier may, at the reduced number of sites specified in Table 11.17-VII, collect two samples for each applicable water quality parameter annually if, during two consecutive monitoring periods all of the following criteria are met:

(I) The 90th percentile lead level is less than or equal to (≤) 0.005 mg/L.

(II) The 90th percentile copper level is less than or equal to (≤) 0.65 mg/L.

(III) The Department-specified values for water quality parameters reflecting optimal corrosion control treatment have been maintained.

(iii) The supplier must collect tap samples evenly throughout the compliance period to reflect seasonal variability.

(j) Increased Monitoring Requirements for Water Quality Parameters

(i) If the supplier is monitoring water quality parameters at a reduced frequency, the supplier must increase the water quality parameter tap monitoring frequency and the number of sites as specified in 11.17(5)(g) or 11.17(5)(h) if one or more of the following occur:

(A) A lead trigger level exceedance occurs.

(B) A copper action level exceedance occurs.

(C) An excursion occurs as specified in 11.17(5)(l).

(ii) The supplier may return to a reduced water quality parameter tap monitoring frequency and reduced number of sites if the conditions specified in 11.17(5)(i) are satisfied.

(k) Treatment Technique Compliance Determination for Optimal Corrosion Control Treatment

(i) The supplier must maintain the Department-specified values for water quality parameters to demonstrate the continued operation and maintenance of optimal corrosion control treatment.

(ii) Compliance with monitoring requirements and Department-specified values for water quality parameters is determined for each six-month compliance period.

(iii) The results of all water quality parameter monitoring samples collected in addition to the minimum requirements of this section, 11.17(5), must be considered by the supplier and the Department in making any determinations (e.g., determining concentrations of water quality parameters) under 11.17(4) and 11.17(5).

(iv) The supplier must calculate the daily value for each water quality parameter at each sampling location as follows:

(A) On days when more than one sample for a water quality parameter is collected at a sampling location, the daily value is the average of all results collected on that day through continuous monitoring and/or grab sampling.

(B) On days when only one sample for a water quality parameter is collected at a sampling location, the daily value is that sample result.

(C) On days when no sample is collected for a water quality parameter at a sampling location, the daily value is the daily value calculated on the most recent day on which the water quality parameter was sampled at the sampling location.

(D) The Department may exclude sample results from this calculation due to obvious sampling errors when appropriate.

(l) Treatment Technique Violations for Water Quality Parameters

(i) If an excursion occurs for any Department-specified water quality parameter, or combination of water quality parameters, at any sampling location, or combination of sampling locations, on more than nine days total during any six-month compliance period, a treatment technique violation occurs.

(A) “EXCURSION” means the daily value for one or more water quality parameters at a sampling location is less than (<) the minimum value or outside the Department-specified range of values.

(m) Response to a Treatment Technique Violation for Water Quality Parameters

(i) In the event of a water quality parameters treatment technique violation, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs.

(B) Distribute Tier 2 public notice as specified in 11.33.

(C) Begin lead and copper tap sampling every six months at the number of sites specified in Table 11.17-IV no later than the six-month compliance period beginning January 1 of the calendar year following the violation.

(D) Monitor water quality parameters as specified in 11.17(5)(g) or 11.17(5)(h).

11.17(6) Sampling and Treatment Requirements for Lead and Copper in Source Water

(a) Applicability

If the lead or copper action level is exceeded, the supplier must comply with the requirements for lead and copper entry point sampling and if necessary, the installation of additional treatment as specified in this section, 11.17(6).

(b) Sampling and Treatment Requirements After Exceeding the Lead or Copper Action Level

(i) No later than six months after the end of the tap sampling period during which the lead or copper action level was exceeded either for the first time or for the first time after the addition of a new source or installation of source water treatment required under 11.17(6)(b)(iii), the supplier must:

(A) Collect one lead and copper sample from each entry point.

(B) Submit a written recommendation for the installation and operation of one of the source water treatments specified in 11.17(6)(b)(iii)(B)(II)(a-d).

(I) The supplier may recommend that treatment is not necessary based on the demonstration that source water treatment will not minimize lead and copper levels at the taps.

(C) The Department may waive the source water monitoring requirement if all of the following criteria are met:

(I) The supplier has already conducted source water monitoring following a previous action level exceedance.

(II) The Department has determined that source water treatment is not required.

(III) The supplier has not added any new water sources.

(ii) For the purposes of this section, if the supplier is required to conduct lead and copper tap monitoring annually or less frequently, the end of the tap sampling period is September 30 of the calendar year in which the sampling occurs, or, if the Department has established an alternate tap sampling period, the last day of that period.

(iii) No later than six months after the supplier submits the lead and copper entry point sample results, the Department shall evaluate the results to determine whether source water treatment is necessary to minimize lead and copper levels at the taps.

(A) If the Department requests additional information to make the determination, the supplier must submit that information no later than the date specified in the request.

(B) If the Department determines that additional treatment is necessary for lead and copper in the source water, the Department shall require the supplier to either:

(I) Install and operate the supplier-recommended treatment; or

(II) Install and operate one of the following treatments:

(a) Ion exchange.

(b) Reverse osmosis.

(c) Lime softening.

(d) Coagulation and filtration.

(C) The Department shall notify the supplier in writing of the determination and basis for the decision.

(c) Installation of Additional Treatment for Lead and Copper in the Source Water

(i) No later than 24 months after the Department determines that additional treatment is necessary for lead and copper in the source water, the supplier must:

(A) Properly install and operate the Department-approved treatment.

(B) Submit certification that the Department-approved treatment was installed.

(ii) No later than 12 months after the installation of additional treatment for lead and copper in the source water, the supplier must collect samples during two consecutive six-month compliance periods as follows:

(A) One lead and copper sample at each entry point.

(B) Lead and copper tap samples at the routine number of sites specified in Table 11.17-IV.

(iii) For the addition of a new source after installation of additional treatment for lead and copper in the source water, the supplier must collect one lead and copper sample from each entry point until the supplier demonstrates that lead and copper entry point sample results have been less than (<) the maximum permissible lead and copper concentrations specified by the Department in 11.17(6)(d) or the Department determines that source water treatment is not needed.

(d) Treatment Technique Requirements After the Department Specifies Maximum Permissible Levels for Lead and Copper at the Entry Point

(i) The Department must review the sample results that were collected before and after the installation of treatment and determine if the treatment was properly installed and operated.

(A) No later than six months after the supplier collects follow-up tap water samples and lead and copper entry point samples, the Department must specify maximum permissible levels that the supplier must comply with for lead and copper at each entry point that reflect the contaminant removal capability of the treatment when it is properly operated and maintained.

(B) The Department must notify the supplier, in writing, and explain the basis for the decision.

(ii) Upon its own initiative or in response to a request, the Department may modify the treatment requirements or maximum permissible levels if it determines that the change is necessary to ensure that the lead and copper levels at the entry point are minimized.

(A) The supplier, or other interested party, may request in writing that the Department modify treatment or maximum permissible levels. The request must explain why the modification is appropriate and must include supporting documentation.

(B) The Department shall notify the supplier, in writing, of the modified treatment requirements or maximum permissible levels and include all of the following information:

(I) The basis for the decision.

(II) An implementation schedule for the supplier to complete the modifications.

(e) Treatment Decisions by EPA in Lieu of the Department on Source Water Treatment

(i) Pursuant to the procedures in 40 CFR 142.19, the EPA Regional Administrator may review treatment determinations made by the Department under 11.17(6)(b) and 11.17(6)(d) or under 40 CFR 141.83(b)(2), (4), or (6) and issue Federal treatment determinations consistent with the requirements of 11.17(6)(b) and 11.17(6)(d) or 40 CFR 141.83(b)(2), (4), or (6) where the Administrator finds that:

(A) The Department has failed to issue a treatment determination by the applicable deadlines specified in 11.17(6)(b-d).

(B) The Department has abused its discretion in a substantial number of cases or in cases affecting a substantial population; or

(C) The technical aspects of the Department's determination would be indefensible in an expected Federal enforcement action taken against a system.

(f) Routine Sampling Frequency for Lead and Copper at the Entry Point

(i) If the Department specifies maximum permissible levels, the supplier must operate in compliance with the Department-specified maximum permissible lead and copper source water levels and collect lead and copper samples at each entry point as follows:

(A) For groundwater systems, once every three calendar years.

(I) The supplier must collect samples no later than every third calendar year.

(B) For surface water systems, annually.

(I) The first sample must be collected in the same calendar year that the Department specifies the maximum permissible levels.

(C) If the lead and copper tap sample results are less than or equal to (≤) the action level during any lead and copper entry point monitoring period, the supplier is not required to collect lead and copper entry point samples.

(ii) If a sample was collected at an entry point during the current monitoring period that was not sampled during previous monitoring periods, the supplier must submit an explanation for the change in entry point(s).

(g) Reduced Sampling Frequency for Lead and Copper at the Entry Point

(i) The supplier may reduce the sampling frequency for lead and copper entry point samples to once during each nine-year compliance cycle if:

(A) For groundwater systems, the supplier demonstrates that lead and copper entry point sample results have been less than (<) the maximum permissible levels specified by the Department for at least three consecutive three-year compliance periods.

(B) For surface water systems, the supplier demonstrates that lead and copper entry point sample results have been less than (<) the maximum permissible levels specified by the Department for at least three consecutive years.

(ii) If the supplier is on a nine-year sampling frequency, the supplier must collect samples no later than every ninth calendar year.

(iii) For new sources, the supplier is not eligible for a reduced sampling frequency for lead and copper at the entry point until the results collected from the new source during three consecutive monitoring periods are less than (<) the Department-specified maximum permissible levels.

(iv) If a sample was collected at an entry point during the current monitoring period that was not sampled during previous monitoring periods, the supplier must submit an explanation for the change in entry point(s).

(h) Response to an Exceedance of Maximum Permissible Levels

If the maximum permissible lead or copper concentration is exceeded at an entry point, the Department may require the supplier to collect a confirmation lead and copper entry point sample as soon as possible but no later than two weeks after the initial entry point sample was collected.

(i) Compliance Determination for Lead and Copper in Source Water

(i) If a confirmation sample is collected, the supplier must average the results of the initial and confirmation samples to determine compliance with the maximum permissible level(s).

(ii) If a confirmation sample is not collected, compliance is determined based on the individual sample result.

(iii) If a sample result is less than (<) the method detection limit, the sample result will be given a value of zero when calculating compliance.

(iv) If a sample result is greater than (>) the method detection limit but less than (<) 0.005 mg/L for lead or 0.050 mg/L for copper, when calculating compliance, the supplier must use:

(A) For lead, the measured result or 0.0025 mg/L.

(B) For copper, the measured result or 0.025 mg/L.

(j) Treatment Technique Violations for Lead and Copper in Source Water

(i) The following constitute lead and copper in source water treatment technique violations:

(A) A confirmation sample is collected and the average of the initial sample result and its confirmation sample result is greater than (>) the maximum permissible level(s) for lead and/or copper.

(B) A confirmation sample is not collected and the individual sample result is greater than (>) the maximum permissible level(s) for lead and/or copper.

(C) The supplier fails to install Department-approved treatment.

(k) Response to Treatment Technique Violations for Lead and Copper in Source Water

(i) In the event of a lead and copper in source water treatment technique violation, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs.

(B) Distribute Tier 2 public notice as specified in 11.33.

(C) In the event of a treatment technique violation for exceeding the maximum permissible level(s), the Department may require the supplier to make changes to the treatment.

11.17(7) Lead Service Line Replacement Requirements

(a) Applicability

(i) For all community and non-transient, non-community water systems that have one or more lead, galvanized requiring replacement, or lead status unknown service lines in their distribution system, the supplier must comply with the requirements in this section 11.17(7).

(ii) For all community and non-transient, non-community water systems that have one or more lead goosenecks, pigtails, or connectors in their distribution system, the supplier must comply with the requirements specified in 11.17(7)(d) and 11.17(7)(l)(i)(B).

(b) Lead Service Line Replacement Plan

(i) The supplier must develop a lead service line replacement plan sufficiently detailed to ensure the supplier is able to comply with the lead service line replacement requirements specified in this section, 11.17(7). The plan must include a description of all of the following:

(A) A strategy for determining the composition of lead status unknown service lines in its inventory.

(B) A procedure for conducting full lead service line replacement.

(C) A strategy for informing customers before a full or partial lead service line replacement.

(D) For systems that serve greater than (>) 10,000 people, a lead service line replacement goal rate recommended by the supplier in the event of a lead trigger level exceedance.

(E) A procedure for customers to flush service lines and premise plumbing of particulate lead.

(F) A lead service line replacement prioritization strategy based on factors including but not limited to the targeting of known lead service lines, lead service line replacement for disadvantaged consumers, and populations most sensitive to the effects of lead.

(G) A funding strategy for conducting lead service line replacements which considers ways to accommodate customers that are unable to pay to replace the portion they own.

(c) Determining Number of Goal-Based and Mandatory Service Line Replacements

(i) To calculate the number of service line replacements applicable to 11.17(7)(g) and 11.17(7)(h), the replacement rate must be applied to the sum of known lead and galvanized requiring replacement service lines when the supplier first exceeds the trigger or action level plus the number of lead status unknown service lines in the beginning of each year of an annual goal or mandatory lead service line replacement program.

(ii) Each service line shall count only once for purposes of calculating the required number of service line replacements, even where the ownership of the service line is split and both the customer-owned and system-owned portions require replacement.

(iii) The number of service lines requiring replacement must be updated annually to subtract the number of lead status unknown service lines that were discovered to be non-lead and to add the number of non-lead service lines that were discovered to be a lead or galvanized requiring replacement service lines.

(iv) Verification of a lead status unknown service line as non-lead in the inventory does not count as a service line replacement.

(d) Operating Procedures for Replacing Lead Goosenecks, Pigtails, or Connectors

(i) The supplier must replace any lead gooseneck, pigtail, or connector it owns when encountered during planned or unplanned water system infrastructure work.

(ii) The supplier must offer to replace a customer-owned lead gooseneck, pigtail, or connector.

(A) The supplier is not required to bear the cost to replace the customer-owned parts.

(iii) The supplier is not required to replace a customer-owned lead gooseneck, pigtail, or connector if the customer objects to its replacement.

(iv) The replacement of a lead gooseneck, pigtail, or connector does not count towards the requirements for goal-based or mandatory lead service line replacements specified in 11.17(7)(g) and 11.17(7)(h), respectively.

(v) Upon replacement of any gooseneck, pigtail, or connector that is attached to a lead service line, the water system must follow risk mitigation procedures specified in 11.17(7)(i)(ii).

(e) Requirements for Conducting Lead Service Line Replacement that May Result in Partial Replacement

(i) If the supplier plans to partially replace a lead service line (e.g., replace only the portion of a lead service line that it owns) in coordination with planned infrastructure work, the supplier must:

(A) Provide notice to the owner of the affected service line, or the owner's authorized agent, as well as non-owner resident(s) supplied by the affected service line at least 45 days prior to the replacement.

(I) The notice must explain that the supplier will replace the portion of the line it owns and offer to replace the portion of the service line not owned by the supplier.

(a) The supplier is not required to bear the cost to replace the portion of the affected service line owned by the customer.

(B) Before the affected service line is returned to service, provide notification meeting the following requirements:

(I) The content requirements of 11.17(8)(b), explaining that consumers may experience a temporary increase of lead levels in their drinking water due to the replacement.

(II) Information about the health effects of lead.

(III) Actions consumers can take to minimize their exposure to lead in drinking water.

(C) Provide information about service line flushing in accordance with the procedure developed in 11.17(7)(b)(i)(E) before the affected service line is returned to service.

(D) Provide the consumer with a pitcher filter or POU device certified by an American National Standards Institute accredited certifier to reduce lead before the affected service line is returned to service.

(I) The supplier must also provide the consumer with six months of replacement cartridges and instructions for use.

(II) If the affected service line serves more than one residence or non-residential unit (e.g., a multi-unit building), the supplier must provide a filter, six months of replacement cartridges and use instructions to every residence in the building.

(E) For single family residences supplied by a lead service line, distribute notification and informational material by mail or another Department-approved method.

(F) For multi-family residences supplied by a lead service line, distribute notification and informational material by mail or another Department-approved method, or post the information in a conspicuous location.

(G) Offer to collect a follow-up tap sample between three and six months after completion of a partial lead service line replacement or full lead service line replacement.

(I) The supplier must provide the results of the sample in accordance with 11.17(3)(h).

(ii) For suppliers that replace the portion of the lead service line it owns due to an emergency repair, the supplier must provide notice and risk mitigation measures to the people supplied by the affected service line in accordance with 11.17(7)(e)(i)(B-F) before the affected service line is returned to service.

(iii) When the supplier is notified by the customer that the customer's portion of the lead service line will be replaced, the supplier must:

(A) Make a good faith effort to coordinate simultaneous replacement of its portion of the service line.

(B) If simultaneous replacement cannot be conducted, replace its portion as soon as possible but no later than 45 days after the customer replaces its portion of the lead service line.

(C) Provide notification and risk mitigation measures in accordance with 11.17(7)(e)(i)(B-F).

(D) If the supplier fails to replace its portion of the lead service line within 45 days after the customer replaces their portion of the lead service line, notify the Department within 30 days of failing to meet the deadline in accordance with 11.17(7)(l)(i)(D).

(I) The supplier must complete the replacement no later than 180 days after the customer replaces its portion.

(iv) When the supplier is notified or otherwise learns that replacement of a customer-owned lead service line has occurred within the previous six months and left in place a system-owned lead service line, the supplier must:

(A) Replace its portion no later than 45 days after becoming aware of the customer replacement.

(B) Provide notification and risk mitigation measures in accordance with 11.17(7)(e)(i)(B-F) within 24 hours of becoming aware of the customer replacement.

(C) If the supplier fails to replace its portion of the affected service line within 45 days of becoming aware of the customer replacement, notify the Department within 30 days of failing to meet the deadline in accordance with 11.17(7)(l)(i)(D).

(I) The supplier must complete the replacement no later than 180 days after the date the customer replaces its portion.

(v) When the supplier is notified or otherwise learns of a replacement of a customer-owned lead service line which occurred more than six months ago, the supplier is not required to complete the lead service line replacement of the system-owned portion.

(A) The system-owned portion of the service line must still be included in the calculation of a lead service line replacement rate under 11.17(7)(c).

(f) Requirements for Conducting Full Lead Service Line Replacement

(i) If the supplier conducts a full lead service line replacement, the supplier must:

(A) Provide notice to the owner of the affected service line, or the owner's authorized agent, as well as non-owner resident(s) supplied by the affected service line that meets the content requirements of 11.17(7)(e)(i)(B)(I-III) within 24 hours of completion of the replacement.

(B) Provide risk mitigation measures to the persons supplied by the affected service line in accordance with 11.17(7)(e)(i)(C-G).

(ii) The supplier is not required to bear the cost of replacement of the portion of the lead service line not owned by the system.

(g) Goal-Based Full Lead Service Line Replacement for Water Systems Whose 90th Percentile Lead Level is Above the Trigger Level but at or Below the Lead Action Level

(i) For systems serving greater than (>) 10,000 people whose 90th percentile of lead tap sample results is greater than (>) the lead trigger level but less than or equal to (≤) the lead action level, the supplier must conduct goal-based full lead service line replacement at a rate approved by the Department.

(A) The supplier must calculate the number of full lead service line replacements it must conduct annually in accordance with 11.17(7)(c).

(B) Replacement of lead service lines must be conducted in accordance with the requirements specified in 11.17(7)(e) and 11.17(7)(f).

(C) Only full lead service line replacements count towards the supplier’s annual replacement goal. Partial lead service line replacements do not count towards the goal.

(D) The supplier must provide information to customers with lead, galvanized requiring replacement, or lead status unknown service lines as required in 11.17(7)(j).

(E) If the supplier fails to meet its lead service line replacement goal, the supplier must:

(I) Conduct public outreach activities specified in 11.17(7)(k) until either:

(a) The supplier meets its replacement goal; or

(b) Tap sampling shows the lead 90th percentile is less than or equal to (≤) the lead trigger level for two consecutive annual monitoring periods.

(II) Resume its goal-based lead service line replacement program if at any time the 90th percentile lead level is greater than (>) the lead trigger level but less than or equal to (≤) the lead action level.

(F) The first year of lead service line replacement must begin on the first day following the end of the tap sampling period in which the lead trigger level was exceeded.

(I) If sampling is required annually or less frequently, the end of the tap sampling monitoring period is September 30 of the calendar year in which the sampling occurs.

(II) If the Department has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(h) Mandatory Full Lead Service Line Replacement for Water Systems whose 90th Percentile Lead Level Exceeds the Lead Action Level

(i) For systems serving greater than (>) 10,000 people whose 90th percentile of lead tap sample results collected under 11.17(3) exceeds the lead action level, the supplier must conduct mandatory full lead service line replacement at an average annual rate of at least three percent, calculated on a two-year rolling basis.

(A) The average annual number of full lead service line replacements must be calculated in accordance with 11.17(7)(c).

(B) Lead service line replacement must be conducted in accordance with the requirements specified in 11.17(7)(e) and 11.17(7)(f).

(C) Only full lead service line replacement counts towards the supplier's mandatory replacement rate of at least three percent annually. Partial lead service line replacements do not count towards the mandatory replacement rate.

(D) The supplier must provide information to customers with lead, galvanized requiring replacement, or lead status unknown service lines consistent with the requirements specified in 11.17(7)(j).

(E) For community water systems serving less than or equal to (≤) 10,000 people and for non-transient non-community water systems for which the Department has approved or designated lead service line replacement as a compliance option, the supplier must complete lead service line replacement as described in 11.17(4)(i)(vi)(B).

(I) Replacement of lead service lines must be conducted in accordance with the requirements specified in 11.17(7)(e) and 11.17(7)(f).

(F) The first year of lead service line replacement shall begin on the first day following the end of the tap sampling period in which the lead action level was exceeded.

(G) When the Department determines a shorter lead service line replacement schedule is feasible, taking into account the number of lead service lines in the system, the Department shall notify the supplier of the alternative replacement schedule in writing within six months after the supplier is required to begin lead service line replacement according to 11.17(7)(h)(i)(F).

(ii) The supplier may cease mandatory lead service line replacement if either of the following criteria are met:

(A) The supplier has conducted a cumulative percentage of replacements greater than or equal to (≥) three percent, or other percentage specified in 11.17(7)(h)(i)(G), of the service lines specified in 11.17(7)(c) multiplied by the number of years between when the supplier most recently began mandatory lead service line replacement and the date when the supplier's 90th percentile lead level, in accordance with 11.17(3), is less than or equal to (≤) the lead action level for four consecutive six-month monitoring periods.

(I) If the lead action level is subsequently exceeded, the supplier must resume mandatory lead service line replacement at the same two-year rolling average rate, unless the Department has designated an alternate replacement rate under 11.17(7)(h)(i)(G).

(B) The supplier demonstrates all of the following:

(I) The system has no remaining lead status unknown service lines in its inventory; and

(II) The supplier has obtained refusals to conduct full lead service line replacement or non-responses from every remaining customer supplied by a full or partial lead service line, or a galvanized requiring replacement service line.

(a) For refusals and non-responses, the supplier must provide documentation to the Department of customer refusals including a refusal signed by the customer, documentation of a verbal statement made by the customer refusing replacement, or documentation of no response from the customer after the supplier made a minimum of two good faith attempts to reach the customer regarding full lead service line replacement.

(b) If the lead action level is subsequently exceeded, the supplier must contact all customers supplied by a full or partial lead service line or a galvanized requiring replacement service line with an offer to replace the customer-owned portion. The supplier is not required to bear the cost for the replacement of the customer-owned lead service line.

(i) <u>Notification Due to a Disturbance to a Known or Potential Service Line Containing Lead</u>

(i) If the supplier causes a disturbance to a lead, galvanized requiring replacement, or lead status unknown service line that results in the water to an individual service line being shut off or bypassed, such as operating a valve on a service line or meter setter, and without conducting a partial or full lead service line replacement, the supplier must provide the people supplied at that service connection with the following before the affected service line is returned to service:

(A) Information about the potential for elevated lead levels in drinking water as a result of the disturbance.

(B) Instructions for a flushing procedure to remove particulate lead.

(ii) If the supplier causes a disturbance of a lead, galvanized requiring replacement, or lead status unknown service line resulting from the replacement of an inline water meter, a water meter setter, or gooseneck, pigtail, or connector, the supplier must provide the people supplied at that service connection with the following before the affected service line is returned to service:

(A) Information about the potential for elevated lead levels in drinking water as a result of the disturbance.

(B) Public education materials that meet the content requirements specified in 11.17(8)(b).

(C) A pitcher filter or POU device certified by an American National Standards Institute accredited certifier to reduce lead, instructions to use the filter, and six months of filter replacement cartridges.

(iii) If the supplier conducts a partial or full lead service line replacement, the supplier must follow procedures in accordance with the requirements specified in 11.17(7)(e)(i)(B-G) and 11.17(7)(f)(i)(A-B), respectively.

(j) Information for Persons Supplied by Known or Potential Service Lines Containing Lead After a Lead Trigger Level Exceedance

(i) For systems with lead service lines that exceed the lead trigger level, the supplier must provide notice to all consumers supplied by a lead, galvanized requiring replacement, or lead status unknown service line, including all of the following:

(A) Information regarding the water system's lead service line replacement program; and

(B) Opportunities for replacement of the lead service line.

(ii) The supplier must distribute notification by mail or by another Department-approved method no later than 30 days after the end of the tap sampling period in which the trigger level exceedance occurred.

(A) The supplier must repeat the distribution of the notification annually until the results of sampling conducted under 11.17(3) are less than or equal to (≤) the lead trigger level.

(k) Outreach Activities for Failure to Meet the Lead Service Line Replacement Goal

(i) For community water systems that serve greater than (>) 10,000 people, if the supplier in the first year does not meet its annual lead service line replacement goal as required under 11.17(7)(g), the supplier must conduct one outreach activity from the following list in the following year until the system meets its replacement goal or until tap sampling shows that the 90^{th} percentile for lead is less than or equal to (≤) the lead trigger level for two consecutive tap sampling monitoring periods:

(A) Send certified mail to customers with a lead or galvanized requiring replacement service line to inform them about the water system's goal-based lead service line replacement program and opportunities for replacement of the service line.

(B) Conduct a townhall meeting.

(C) Participate in a community event to provide information about its lead service line replacement program and distribute public education materials that meet the content requirements specified in 11.17(8)(b).

(D) Contact customers by phone, text message, email, or door hanger.

(E) Use another method approved by the Department to discuss the lead service line replacement program and opportunities for lead service line replacement.

(ii) After the first year following a trigger level exceedance, for any system that thereafter continues to fail to meet its lead service line replacement goal, the supplier must conduct one activity specified in 11.17(7)(k)(i)(A-E) and two additional outreach activities per year from the following list:

(A) Conduct a social media campaign.

(B) Conduct outreach via newspaper, television, or radio.

(C) Contact organizations representing plumbers and contractors by mail to provide information about lead in drinking water including health effects, sources of lead, and the importance of using lead-free plumbing materials.

(D) Visit targeted customers to discuss the lead service line replacement program and opportunities for replacement.

(iii) The supplier may cease outreach activities when tap sampling shows that the 90th percentile for lead is less than or equal to (≤) the lead trigger level for two consecutive tap sampling monitoring periods or when all customer-side lead or galvanized requiring replacement service line owners refuse to participate in the lead service line replacement program.

(A) For refusals, the supplier must obtain a signed statement by the customer refusing lead service line replacement, or maintain documentation by the supplier of a verbal refusal or of no response after two good faith attempts to reach the customer.

(l) Reporting Requirements Related to Lead Service Line Replacements

(i) The supplier must report the following information to the Department to demonstrate compliance with the requirements of this section, 11.17(7):

(A) By October 16, 2024, the supplier must submit a lead service line replacement plan as specified in 11.17(7)(b).

(B) No later than 30 days after the end of each tap sampling monitoring period, the supplier must certify that it conducted replacement of any encountered lead goosenecks, pigtails, and connectors in accordance with 11.17(7)(d).

(C) No later than 30 days after the end of each tap sampling monitoring period, the supplier must certify that any partial or full lead service line replacements were conducted in accordance with 11.17(7)(e) and 11.17(7)(f), respectively.

(D) If the supplier fails to meet the 45-day deadline to complete a customer initiated lead service line replacement pursuant to 11.17(7)(e)(iv), the supplier must notify the Department within 30 days of the replacement deadline to request an

extension of the deadline for up to 180 days of the customer-initiated lead service line replacement.

(I) The supplier must certify annually that it has completed all customer-initiated lead service line replacements in accordance with 11.17(7)(e)(iv).

(E) No later than 30 days after the end of the supplier's annual lead service line replacement requirements under 11.17(7)(g) or 11.17(7)(h), the supplier must submit the following information to the Department, and continue to submit it each year the supplier conducts lead service line replacement under 11.17(7)(g) or 11.17(7)(h):

(I) The number of lead service lines in the initial inventory.

(II) The number of galvanized requiring replacement service lines in the initial inventory.

(III) The number of lead status unknown service lines in the inventory at the onset of the supplier's annual lead service line replacement program.

(IV) The number of full lead service lines that have been replaced and the address associated with each replaced service line.

(V) The number of galvanized requiring replacement service lines that have been replaced and the address associated with each replaced service line.

(VI) The number of lead status unknown service lines remaining in the inventory.

(VII) The total number of lead status unknown service lines determined to be non-lead; and

(VIII) The total number of service lines initially inventoried as "non-lead" later discovered to be a lead service line or a galvanized requiring replacement service line.

(F) No later than 30 days after the end of each tap sampling period, if the supplier has received customer refusals about lead service line replacements or customer non-responses after a minimum of two good faith efforts by the supplier to contact customers regarding full lead service line replacements in accordance with 11.17(7)(h)(ii)(B)(II), the supplier must certify to the Department the number of customer refusals or non-responses it received from customers supplied by a lead service line or galvanized requiring replacement service line, and maintain such documentation.

(G) No later than 12 months after the end of a tap sampling period in which the supplier exceeds the lead action level in sampling conducted pursuant to 11.17(3)(d), the supplier must provide the Department a schedule for annually replacing an average annual rate, calculated on a two year rolling basis, of at least three percent, or otherwise specified in 11.17(7)(h)(i)(G), of the number of known lead service lines and galvanized lines requiring replacement service lines when the lead trigger or action level was first exceeded and lead status unknown

service lines at the beginning of each year that required replacement occurs in its distribution system.

(H) No later than 12 months after the end of a tap sampling period in which the supplier exceeds the lead trigger level in sampling conducted pursuant to 11.17(3)(d), and every 12 months thereafter, the supplier must certify to the Department in writing that the supplier has:

(I) Conducted consumer notification as specified in 11.17(7)(j).

(II) Delivered public education materials to the affected consumers as specified in 11.17(8)(b).

(III) If the supplier does not meet its annual service line replacement goal as required under 11.17(7)(g), the supplier must submit certification to the Department that the supplier has conducted public outreach as specified in 11.17(7)(k) and submit a copy of the outreach materials used.

(IV) Provided the results of samples collected between three and six months after the date of a full or partial lead service line replacement to the residents in accordance with the timeframes specified in 11.17(3)(h)(ii). Mailed notices postmarked within three business days of receiving the results shall be considered "on time."

(I) If the supplier collects samples following a partial lead service line replacement required under 11.17(7)(e)(i)(G), the supplier must report the results to the Department by no later than the 10th of the month following the month in which the supplier receives the laboratory results, or as specified by the Department.

(I) The supplier must report any additional information as specified by the Department, in a time and manner specified by the Department, to verify that all partial lead service line replacement activities have taken place.

(J) No later than July 1 of each calendar year, the supplier must submit the following to the Department:

(I) Certification that the supplier conducted an outreach activity as specified in 11.17(7)(k) when failing to meet the lead service line replacement goal as specified in 11.17(7)(g) for the previous calendar year along with a copy of the outreach provided.

(II) Certification that the supplier delivered notification to affected customers after any lead service line disturbance in accordance with 11.17(7)(i) for the previous calendar year along with a copy of the notification.

(m) Treatment Technique Violations for Lead Service Line Replacement

(i) The following constitute lead service line replacement treatment technique violations:

(A) Failure to develop a lead service line replacement plan as specified in 11.17(7)(b).

(B) Failure to replace the required percentage of lead service lines each year as specified in 11.17(7)(h).

(C) Failure to comply with the reporting requirements specified in 11.17(7)(l) to demonstrate that the replacement requirements have been met.

(D) Failure to distribute notification to the residents of all buildings supplied by the lead service line at least 45 days before beginning a partial lead service line replacement as specified in 11.17(7)(e)(i)(A).

(E) Failure to provide risk mitigation measures to the persons supplied by the affected service line in accordance with 11.17(7)(e)(i)(C-G) after a partial or full lead service line replacement.

(F) Failure to comply with the outreach activity requirements for failure to meet the lead service replacement goal as specified in 11.17(7)(k) and 11.17(7)(l)(i)(H).

(n) Response to Treatment Technique Violations for Lead Service Line Replacement

(i) In the event of a treatment technique violation for lead service line replacement, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs; and

(B) Distribute Tier 2 public notice as specified in 11.33.

11.17(8) Public Education Requirements

(a) Applicability

(i) If the lead action level is exceeded based on tap water sampling collected in accordance with 11.17(3), the supplier must comply with the public education requirements as specified in this section, 11.17(8).

(A) For the purposes of this section, if the supplier is required to conduct lead and copper tap monitoring annually or less frequently, the end of the tap sampling period is September 30 of the calendar year in which the sampling occurs, or, if the Department has established an alternate tap sampling period, the last day of that period.

(b) Content of Public Education Materials

(i) The supplier must include the following elements in printed materials (e.g., brochures and pamphlets) in the same order as follows:

(A) IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. [NAME OF WATER SYSTEM] found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

(B) Health effects of lead: Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects. Adults can have increased risks of heart disease, high blood pressure, kidney or nervous system problems.

(C) Information on sources of lead:

(I) Explain what lead is.

(II) Explain possible sources of lead in drinking water and how lead enters drinking water. Include information on home/building plumbing materials and service lines that may contain lead.

(III) Discuss other important sources of lead exposure in addition to drinking water (e.g., paint).

(D) Discuss the steps the consumer can take to reduce their exposure to lead in drinking water.

(I) Encourage running the water to flush out the lead.

(II) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(III) Explain that boiling water does not reduce lead levels.

(IV) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(V) Suggest that parents consult a medical professional for advice about whether to have their child's blood tested for lead.

(E) Explain why there are elevated levels of lead in the system's drinking water, if known, and what the supplier is doing to reduce the levels in homes or buildings in this area.

(F) For more information call us at [THE WATER SYSTEM'S NUMBER] [(IF APPLICABLE), or visit our website at [THE WATER SYSTEM'S WEBSITE HERE]]. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's website at http://www.epa.gov/lead or contact your health care provider.

(G) For systems with lead service lines, information on lead service lines including all of the following:

(I) Opportunities to replace lead service lines.

(II) An explanation of how to access the service line inventory so the consumer can find out if they have a lead service line.

(III) Information on programs that provide financing solutions to assist property owners with replacement of their portion of a lead service line.

(IV) A statement that the water system is required to replace its portion of a lead service line when the property owner notifies them they are replacing their portion of the lead service line.

(ii) In the printed materials, the supplier must:

(A) Include the language exactly as written and provide the specific information for the text in brackets for 11.17(8)(b)(i)(A), 11.17(8)(b)(i)(B), and 11.17(8)(b)(i)(F).

(B) Provide the information for the requirements specified in 11.17(8)(b)(i)(C-E) and 11.17(8)(b)(i)(G), if applicable.

(iii) For community water systems, the supplier must also include all of the following information:

(A) How consumers can get their water tested.

(B) A discussion of lead in plumbing components and the difference between low lead and lead free.

(iv) If the supplier includes additional information, it must be consistent with the information specified in 11.17(8)(b)(i) and be in plain language that can be understood by the general public.

(v) For systems supplying a large proportion of non-English speaking consumers, as determined by the Department, the supplier must include either:

(A) Information in the appropriate language(s) regarding the importance of the notice; or

(B) A telephone number or address where the consumer may contact the supplier to obtain a translated copy of the public education materials or request assistance in the appropriate language.

(vi) If the supplier exceeds the lead action level based on tap monitoring results collected under 11.17(3)(d), the supplier must offer to sample the tap water of any customer who requests it.

(A) The supplier is not required to pay for collecting or analyzing the sample, nor is the supplier required to collect and analyze the sample.

(c) Distribution of Public Education Materials for Community Water Systems

(i) For community water systems, the supplier must distribute public education materials as specified in this section, 11.17(8)(c). The public education materials distributed must meet the content requirements specified in 11.17(8)(b).

(ii) No later than 60 days after the end of the tap sampling period in which the lead action level exceedance occurred, the supplier must:

(A) Distribute public education materials to all bill paying customers.

(B) Distribute public education materials to local public health agencies even if they are not located in the system's service area.

(I) The supplier must also contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations, which may include organizations outside the service area of the system.

(a) If such a list is provided, the supplier must distribute public education materials to all organizations on the provided list.

(C) Distribute public education materials to all of the following organizations located in the system's service area:

(I) Schools, child care facilities, and school boards.

(II) Women, Infants and Children (WIC) and Head Start programs.

(III) Public and private hospitals and medical clinics.

(IV) Pediatricians.

(V) Family planning clinics.

(VI) Local welfare agencies.

(VII) Obstetricians-Gynecologists and Midwives.

(D) Include an informational notice in the materials distributed to the organizations specified in 11.17(8)(c)(ii)(B-C) that encourages the distribution of the public education materials to all of the organization’s potentially affected customers or community water system’s users.

(E) In addition to distributing public education materials as specified in 11.17(8)(c)(ii)(A-D), complete at least three activities from one or more of the following categories. The content and selection of these methods must be determined in consultation with the Department.

(I) Public service announcements.

(II) Paid advertisements.

(III) Public area informational displays.

(IV) E-mails to customers.

(V) Public meetings.

(VI) Household deliveries.

(VII) Targeted individual customer contact.

(VIII) Direct material distribution to all multi-family homes and institutions.

(IX) Other Department-approved methods.

(F) Begin including a statement on or in each water bill no less frequently than quarterly.

(I) The water bill must include the following statement exactly as written and provide the specific information for the text in brackets:

[INSERT NAME OF WATER SYSTEM] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information, please call [INSERT NAME OF WATER SYSTEM] or visit [INSERT YOUR WEBSITE HERE].

(II) The statement or distribution method may be modified in consultation with the Department. The Department may allow a separate mailing of public education materials to customers if the supplier cannot place the information on water bills.

(G) Submit a press release to newspaper, television, and radio stations.

(H) For systems supplying greater than (>) 100,000 people, post public education materials that meet the content requirements specified in 11.17(8)(b) on the system's public website.

(iii) If needed for implementation purposes, the Department may extend the 60-day deadline for the requirements specified in 11.17(8)(c)(ii) on a case-by-case basis, only if the extension is approved in writing before the deadline.

(iv) For as long as the system exceeds the lead action level, the supplier must continue to distribute public education materials as follows:

(A) The supplier must repeat the tasks as specified in 11.17(8)(c)(ii)(A-E) every 12 months.

(B) The supplier must repeat the tasks as specified in 11.17(8)(c)(ii)(F) with each water bill, but no less frequently than quarterly, for as long as the system exceeds the lead action level.

(C) For systems supplying greater than (>) 100,000 people, the supplier must post and retain public education materials as specified in 11.17(8)(c)(ii)(H) on the system's public website.

(D) The supplier must submit a press release to newspaper, television, and radio stations twice every 12 months or on a Department-approved schedule.

(v) The supplier may apply to the Department in writing to omit the information specified in 11.17(8)(b)(iii) and complete only the tasks specified in sections 11.17(8)(d)(ii-iv) if:

(A) The system is a facility, such as a prison or a hospital, where the population supplied is unable to make improvements to plumbing or install point-of-use treatment devices; and

(B) The supplier supplies water as part of the cost of services provided and does not separately charge for water consumption.

(vi) For community water systems serving less than or equal to (≤) 3,300 people, the supplier may modify the requirements for the distribution of the public education materials as follows:

(A) The supplier must complete at least one activity from the categories specified in 11.17(8)(c)(ii)(E).

(B) The supplier may limit the distribution of the public education materials specified in 11.17(8)(c)(ii)(B-E) to facilities and organizations supplied by the system that are most likely to be visited regularly by pregnant women and children.

(C) If the supplier distributes public education materials to every household supplied by the system, the Department may waive the requirement to submit a press release to newspaper, television, and radio stations as specified in 11.17(8)(c)(ii)(G).

(vii) The supplier may discontinue the distribution of public education materials if the supplier has met the lead action level in the most recent six-month tap sampling monitoring period.

(A) If the lead action level is subsequently exceeded during any monitoring period, the supplier must resume distribution of public education materials meeting the content and distribution requirements specified in 11.17(8)(b) and 11.17(8)(c), respectively.

(viii) For community water systems, the supplier must send copies of the public education materials meeting the content requirements specified in under 11.17(8)(b) of this section to local health agencies on an annual basis for actions conducted in the previous calendar year.

(A) By no later than July 1 of the following calendar year, the supplier must provide the public education materials information to local health agencies by mail or by another Department-approved method.

(d) Distribution of Public Education Materials for Non-Transient, Non-Community Water Systems

(i) For non-transient, non-community water systems, the supplier must distribute public education materials as specified in this section, 11.17(8)(d). The public education materials distributed must meet the content requirements specified in 11.17(8)(b).

(ii) No later than 60 days after the end of the tap sampling period in which the lead action level exceedance occurred, the supplier must:

(A) Post informational posters about lead in drinking water in a public place or common area in each of the buildings supplied by the system; and

(B) Distribute informational pamphlets and/or brochures about lead in drinking water to each individual supplied by the system. The Department may allow the supplier to use electronic transmission and/or printed materials as long as the same coverage is achieved.

(iii) If needed for implementation purposes, the Department may extend the 60-day deadline for the requirements specified in 11.17(8)(d)(ii) on a case-by-case basis, only if the extension is approved in writing before the deadline.

(iv) The supplier must repeat the tasks as specified in 11.17(8)(d)(ii) at least once during each calendar year that the lead action level is exceeded.

(v) The supplier may discontinue the distribution of public education materials if the supplier has met the lead action level in the most recent six-month tap sampling monitoring period.

(A) If the lead action level is subsequently exceeded during any tap sampling period, the supplier must resume the distribution of public education materials as specified in this section, 11.17(8)(d).

(e) Reporting Requirements for Public Education Materials

(i) The supplier must submit all written public education materials to the Department before distribution.

(A) If the Department requires the supplier to obtain approval for the content of written public education materials before distribution, the Department shall notify the supplier of this requirement no later than 15 days after receiving the lead and copper tap sample results.

(ii) No later than the 10th of the month following the end of each period that the supplier was required to complete public education tasks, the supplier must submit documentation to the Department that includes all of the following information:

(A) A copy of the public education materials that meet the content requirements specified in 11.17(8)(b).

(B) Certification that the applicable distribution requirements, specified in 11.17(8)(c) or 11.17(8)(d), were met.

(C) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the supplier distributed public education materials.

(I) If this list was previously submitted to the Department and there have been no changes, the supplier is not required to resubmit this information unless required by the Department. The supplier must certify that the public education materials were distributed to the same list previously submitted.

(f) Treatment Technique Violations and Response for Public Education Requirements

(i) If the supplier fails to comply with any of the content or distribution requirements as specified in 11.17(8)(b-d) for public education materials, a treatment technique violation occurs.

(ii) In the event of a treatment technique violation, the supplier must:

(A) Notify the Department no later than 48 hours after the violation occurs; and

(B) Distribute Tier 2 public notice as specified in 11.33.

11.17(9) Monitoring for Lead in Schools and Child Care Facilities

(a) For all community water systems, the supplier must provide public education and lead monitoring as specified in this section, 11.17(9), at schools and child care facilities they serve which were constructed prior to January 1, 2014 and which are not regulated as a public water system.

(i) By October 16, 2024, the supplier must compile a list of schools and child care facilities supplied by the system and submit it to the Department.

(ii) If the system does not serve any schools or child care facilities that meet the criteria specified in 11.17(9)(a), the supplier must certify to the Department by October 16, 2024 that they do not serve any schools or child care facilities.

(b) Public Education to Schools and Child Care Facilities

(i) The supplier must provide all of the following to elementary schools and child care facilities identified in 11.17(9)(a)(i):

(A) At least annually, information about health risks from lead in drinking water that meets the requirements specified in 11.17(8)(b)(B,C,D,F) and (G) if applicable.

(B) Notification that the supplier is required to sample for lead at elementary schools and child care facilities, including all of the following:

(I) A proposed schedule for sampling at the facility.

(II) Information about sampling for lead in schools and child care facilities (EPA's 3Ts for Reducing Lead in Drinking Water Toolkit, EPA-815-B-18-007 or subsequent EPA guidance).

(III) At least 30 days prior to the sampling event, instructions for identifying taps for sampling and preparing for a sampling event.

(ii) The supplier must include documentation in accordance with 11.17(9)(h)(ii)(C) if an elementary school or child care facility is non-responsive or otherwise declines to participate in the monitoring or education requirements.

(A) A school or child care facility is considered non-responsive after the supplier makes at least two separate good faith attempts to contact the facility to schedule sampling with no response.

(iii) The supplier must contact all secondary schools identified in 11.17(9)(a)(i) at least annually to provide information on health risks from lead in drinking water and how to request lead sampling as specified in 11.17(9)(g).

(c) Lead Sampling in Schools and Child Care Facilities

(i) The supplier must collect lead tap samples at schools and child care facilities from taps typically used for consumption as follows:

(A) Five samples per school at the following locations:

(I) Two drinking water fountains.

(II) One kitchen faucet used for food or drink preparation.

(III) One classroom faucet or other tap used for drinking.

(IV) One nurse's office faucet, as available.

(B) Two samples per child care facility at the following locations:

(I) One drinking water fountain; and

(II) One of either a kitchen faucet used for preparation of food or drink or one classroom faucet or other tap used for drinking.

(C) If any facility has fewer than the required number of taps, the supplier must sample all taps used for consumption.

(D) The supplier may sample at taps with POU devices if the facility has POU devices installed on all taps typically used for consumption.

(E) If any facility does not contain the type of faucets listed above, the supplier must collect a sample from another tap typically used for consumption as identified by the facility.

(F) The supplier must collect first-draw tap samples for lead as follows:

(I) Samples collected from a tap other than a drinking water fountain must be from a cold water tap, if available.

(II) Samples must be 250 ml in volume.

(III) The water must have stood motionless in the plumbing system of the sampling site (building) for at least 8 hours but no more than 18 hours.

(IV) Samples must be analyzed using acidification and the corresponding analytical methods as specified in 11.46(9).

(ii) The supplier may allow the school or child care facility or other appropriately trained individual to collect first-draw tap samples after instructing them on the proper sampling procedures.

(d) Frequency of Sampling at Schools and Child Care Facilities

(i) The supplier must collect samples from at least 20 percent of elementary schools supplied by the system and 20 percent of child care facilities supplied by the system per year, or according to a Department-approved schedule, until all elementary schools and child care facilities identified under 11.17(9)(a)(i) have been sampled or have declined to participate.

(A) The supplier may count a refusal or non-response from an elementary school or child care facility as part of the minimum 20 percent per year.

(ii) The supplier must collect at least one round of lead samples from each elementary school and child care facility between October 16, 2024 and October 16, 2029, unless there are refusals or non-responses from the elementary school or child care facility.

(iii) After the supplier has completed one required cycle of sampling at all elementary schools and child care facilities, the supplier must sample upon request of an elementary school or child care facility as specified in 11.17(9)(g).

(iv) The supplier must sample upon request of a secondary school as specified in 11.17(9)(g). If the supplier receives requests from more than 20 percent of secondary schools identified in 11.17(9)(a)(i) in any of the five years following the October 16, 2024 compliance date, the supplier may schedule the requests that exceed 20 percent for the following year.

(A) The supplier is not required to sample an individual secondary school more than once in the five-year period.

(e) Alternative School and Child Care Lead Sampling Programs

(i) The Department may grant a waiver from the requirements of this section, 11.17(9), if mandatory sampling for lead in drinking water is conducted at schools and child care facilities supplied by a community water system due to a State or local law or program and the following criteria are met:

(A) The sampling is consistent with the requirements specified in 11.17(9)(c-d); or

(B) The sampling is consistent with the requirements specified in 11.17(9)(c)(i) and 11.17(9)(d) and it is combined with one or more of the following remediation actions:

(I) Disconnection of affected fixtures.

(II) Replacement of affected fixtures with fixtures certified as lead free.

(III) Installation of POU devices; or

(C) The sampling is conducted in schools and child care facilities supplied by the system less frequently than once every five years and it is combined with any of the remediation actions specified in 11.17(9)(e)(i)(B)(I-III); or

(D) The sampling is conducted under a grant awarded under Section 1464(d) of the SDWA, consistent with the requirements of the grant.

(ii) If the supplier is granted a waiver, the duration of the waiver may not exceed the time period covered by the mandatory or voluntary sampling and will automatically expire at the end of any 12-month period during which sampling is not conducted at the required number of schools or child care facilities.

(iii) The Department may issue a partial waiver to the supplier if the sampling covers only a portion of the schools or child care facilities supplied by the system identified in 11.17(9)(a)(i).

(iv) The Department may issue a written waiver applicable to more than one supplier (e.g., one waiver for all suppliers subject to a statewide sampling program that meets the requirements of this section, 11.17(9)(e)).

(v) The Department may not issue a waiver to the supplier for sampling that was conducted in schools or child care facilities prior to October 16, 2024.

(f) Notification of Results from Schools and Child Care Facilities

(i) The supplier must provide lead tap sample results as soon as possible but no later than 30 days after receipt of the results to the school or child care facility, along with information about remediation options.

(ii) The supplier must provide lead tap sample results annually to:

(A) The appropriate local and State public health authorities; and

(B) The Department, as specified in 11.17(9)(h).

(g) Lead Sampling in Schools and Child Care Facilities upon Request

(i) The supplier must contact schools and child care facilities identified in 11.17(9)(a)(i) at least annually to provide all of the following information:

(A) An explanation of the health risks from lead in drinking water.

(B) How to request sampling for lead at the facility; and

(C) Information about sampling for lead in schools and child care facilities (EPA's 3Ts for Reducing Lead in Drinking Water Toolkit, EPA-815-B-18-007, or subsequent EPA guidance).

(ii) The supplier must conduct sampling as specified in 11.17(9)(c) when requested by the facility and provide all of the following:

(A) At least 30 days prior to the sampling event, instructions for identifying taps for sampling and preparing for a sampling event; and

(B) Lead tap sample results as specified in 11.17(9)(f).

(iii) If the supplier receives requests from more than 20 percent of the schools and child care facilities, including secondary schools, identified in 11.17(9)(a)(i) in a given year, the supplier may schedule sampling for those that exceed 20 percent for the following year.

(A) The supplier is not required to sample an individual school or child care facility more than once every five years.

(iv) If voluntary sampling for lead in drinking water is conducted for schools and child care facilities supplied by a community water system that meets the requirements of this section, 11.17(9), the Department may exempt the supplier from the requirements of this section by issuing a written waiver in accordance with 11.17(9)(e).

(h) Reporting Requirements for Public Education and Sampling in Schools and Childcare Facilities

(i) The supplier must either certify that there have been no changes to the list of schools and child care facilities supplied by the system and developed pursuant to 11.17(9)(a)(i), or submit a revised list at least once every five years.

(ii) No later than July 1 of each calendar year, the supplier must submit a report to the Department documenting the public education and sampling activities conducted during the previous calendar year. The report must include all of the following:

(A) Certification that the supplier made a good faith effort to identify schools and child care facilities in accordance with 11.17(9)(h)(i). The good faith effort may include reviewing customer records and requesting lists of schools and child care facilities from the primacy agency or other licensing agency.

(I) If the supplier certifies that no schools or child care facilities are supplied by the water system, the supplier is not required to submit information required in 11.17(9)(h)(ii)(B-D) in the report.

(B) Certification that the supplier has distributed information about health risks from lead in drinking water to the schools and child care facilities that they serve in accordance with 11.17(9)(b)(i) and 11.17(9)(g)(i).

(C) Certification that the supplier has completed the notification and sampling requirements of 11.17(9) at a minimum of 20 percent of elementary schools and 20 percent of child care facilities, including all of the following information:

(I) The number of schools and child care facilities supplied by the water system.

(II) The number of schools and child care facilities sampled in the calendar year.

(III) The number of schools and child care facilities that have refused sampling.

(IV) Information pertaining to outreach attempts for sampling that were declined by the school or child care facility.

(V) The sample results for all schools and child care facilities sampled by the supplier in the calendar year.

(D) For secondary schools that requested sampling under 11.17(9)(g) and elementary schools and child care facilities that have successfully completed one cycle of required sampling, the supplier must submit the following information:

(I) The number of schools and child care facilities supplied by the water system.

(II) The number of schools and child care facilities sampled in the calendar year.

(III) The sample results for all schools and child care facilities sampled by the supplier in the calendar year.

(E) Certification that sample results were provided to schools, child care facilities, and local and State health departments.

11.26 LEAD AND COPPER RULE

11.26(1) Applicability and Definitions

(a) For all community and non-transient, non-community water systems, the supplier must comply with the requirements specified in this rule until October 16, 2024, unless otherwise specified.

(i) The supplier must comply with the lead and copper tap sampling requirements as specified in 11.26(2) and water quality parameter monitoring requirements as specified in 11.26(4) until December 31, 2024.

(ii) Any actions and deadlines under 11.26 due after October 16, 2024 based on monitoring conducted under 11.26(2) shall remain in effect unless the Department notifies the supplier in writing of new requirements and deadlines under 11.17.

(iii) In the event EPA stays or extends the requirements in 40 CFR 141, Subpart I referenced in 11.17, the applicable requirements of 11.26 shall remain in effect until the compliance date in 40 CFR 141.

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11.27 COMPOSITING SAMPLES RULE

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11.27(4) Compositing Samples for Lead and Copper Entry Point Samples

(a) To composite lead and copper entry point samples collected under 11.17 or 11.26, the supplier must comply with the requirements specified in this section 11.27(4).

(b) The supplier may composite samples from no more than five entry points.

(c) Compositing of samples must be performed by certified laboratory personnel.

(d) If the lead concentration in the composite sample is greater than or equal to (≥) 0.001 mg/L or the copper concentration in the composite sample is greater than or equal to (≥) 0.160 mg/L, the supplier must collect confirmation samples no later than 14 days after receiving notification of the composite result.

(i) Instead of collecting confirmation samples, the supplier may use one of the following:

(A) Duplicates of each original sample used in the composite sample.

(B) The original samples used in the composite sample, if a sufficient volume is available.

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11.33 PUBLIC NOTIFICATION RULE

11.33(1) Applicability and Definitions

(a) For all public water systems, the supplier must comply with the public notice requirements specified in this rule for the violations or situations specified in Table 11.33-I.

TABLE 11.33-I VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE	
CPDWR violations	Failure to comply with an MCL or MRDL
	Failure to comply with a treatment technique requirement
	Failure to perform required water quality monitoring
	Failure to comply with required testing procedures
Variance or exemption under 11.43	Operation under a variance or an exemption
	Failure to comply with the terms and schedule of any variance or exemption
Other situations requiring public notice	Occurrence of a waterborne disease outbreak or other waterborne emergency
	Exceedance of the elevated nitrate MCL by non-community water systems, when granted Department approval as specified in 11.18(2)(d)
	Exceedance of the secondary maximum contaminant level for fluoride
	Availability of unregulated contaminant monitoring data
	Repeated failure to sample the source water for *Cryptosporidium*

	Failure to determine bin classification
	Groundwater systems with a waiver from disinfection requirements under 11.13
	Significant deficiencies identified at non-community groundwater systems
	Exceedance of the lead action level
	Other violations and situations determined by the Department to require a public notice

(b) Public notice requirements are divided into three tiers based on the seriousness of the violation or situation and any potential public health effects. Each tier has different requirements. The tiers are as follows:

(i) "TIER 1 PUBLIC NOTICE" means the public notice required for violations and situations with significant potential to have serious adverse effects on public health as a result of short-term exposure.

(ii) "TIER 2 PUBLIC NOTICE" means the public notice required for violations and situations with potential to have serious adverse effects on public health.

(iii) "TIER 3 PUBLIC NOTICE" means the public notice required for all other violations and situations not included in Tier 1 or Tier 2.

11.33(2) Tier 1 Public Notice Form, Manner, and Frequency of Notice

(a) The supplier must distribute Tier 1 public notice for the following violations or situations specified in Table 11.33-II:

TABLE 11.33-II VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING TIER 1 PUBLIC NOTICE

Violation or Situation Description	As specified in
Failure to test for fecal coliforms or *E. coli* following a total coliform-positive repeat sample	11.16(4)(e)
Violation of the *E. coli* MCL	11.16(11)(a)
Violation of the nitrate, nitrite, or total nitrate and nitrite MCL	11.18(5)(a)
Failure to collect a confirmation sample no later than 24 hours after a nitrate or nitrite sample result greater than (>) the MCL	11.18(3)(b)(vii) and 11.18(3)(c)(v)
Exceedance of the elevated nitrate MCL by non-community water systems, permitted to exceed the MCL by the Department	11.18(2)(d)
Acute violation of the chlorine dioxide MRDL	11.23(2)(e)(i)(A)
Failure to collect the required chlorine dioxide samples in the distribution system	11.23(2)(e)(i)(B)
Violation of the maximum turbidity limit treatment technique requirement, as required by the Department after consultation	11.8(2)(d)(i)(B)
Occurrence of a waterborne disease outbreak or other waterborne emergency (e.g. failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination)	.
For groundwater systems, presence of *E. coli*, enterococci, or coliphage in a source water sample	11.11(4)(d)(i) and 11.11(5)(c)(i)
Exceedance of the lead action level	11.17(3)(b)
Other violations or situations with significant potential to have serious adverse effects on public health as a result of short-term exposure, as determined by the Department either in *Colorado Primary Drinking Water Regulations* or on a case-by-case basis	.

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11.33(7) Public Notice Reporting Requirements

No later than 10 calendar days after completing initial or repeat public notice requirements, the supplier must submit a certification that states that the supplier has fully complied with the public notice requirements.

(a) The supplier must include a representative copy of each public notice distributed, published, posted, and/or made available to consumers and the media.

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Violations of *Colorado Primary Drinking Water Regulations*[2]				
Microbiological Contaminants				
Total coliform (TT violations resulting from failure to conduct assessments or corrective actions, and violations resulting from failure to monitor or report)	2	11.16(11)(b)	3	11.16(11)(c-d) 11.16(12)(b)
Seasonal system failure to follow Department-approved start-up procedures before supplying water to the public or failure to submit certification of completed start-up procedures	2	11.16(11)(b)(ii)	3	11.16(11)(d)(iii)
E. coli (MCL violation, monitoring violations, and reporting violations)	1	11.16(11)(a)	3	11.16(11)(c) 11.16(11)(d) 11.16(12)(a) 11.16(12)(c)
E. coli (TT violations resulting from failure to conduct Level 2 assessments or corrective action)	2	11.16(11)(b)(i)	N/A	N/A
Turbidity MCL	2	11.8(2)(d)	3	11.8(2)(c)
Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level)	2, 1[3]	11.8(2)(d)	3	11.8(2)(c), 11.8(2)(g), 11.46(7)
Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	11.8(2)(b)	3	11.8(2)(c), 11.46(7)
Surface Water Treatment Rule: Filter Backwash Recycle Rule	2	11.9(2)	3	11.9(3)
Surface Water Treatment Rule: Enhanced Treatment for *Cryptosporidium* Rule	2	11.10(3)(c), 11.10(4)(b)	2, 3[4]	11.10(2)
Groundwater Rule	2	11.11(2)(d), 11.11(6)(c), 11.11(3)(e)(i), 11.38(4)	3	11.11(2)(c), 11.11(3), 11.11(4), 11.11(5), 11.11(6), 11.38(4)

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Disinfectant residual (TT in the distribution system)	2	11.8(3)(d)(i), 11.11(2)(d)(i)	3	11.8(3)(c)(i), 11.11(2)(c)(i)
Disinfectant residual for public water systems that haul water	N/A	N/A	3	11.8(3)(c)(i)(B), 11.11(2)(c)(i)(B), 11.41(2)(b)
Inorganic Chemicals				
Antimony	2	11.19(5)	3	11.19(3)
Arsenic	2	11.19(5)	3	11.19(3)
Asbestos (fibers >10 µm)	2	11.19(5)	3	11.19(3)
Barium	2	11.19(5)	3	11.19(3)
Beryllium	2	11.19(5)	3	11.19(3)
Cadmium	2	11.19(5)	3	11.19(3)
Chromium (total)	2	11.19(5)	3	11.19(3)
Cyanide	2	11.19(5)	3	11.19(3)
Fluoride	2	11.19(5)	3	11.19(3)
Mercury (inorganic)	2	11.19(5)	3	11.19(3)
Nitrate	1	11.18(5)	1[5], 3	11.18(3)
Nitrite	1	11.18(5)	1[5], 3	11.18(3)
Total Nitrate and Nitrite	1	11.18(5)	3	11.18(3)
Selenium	2	11.19(5)	3	11.19(3)
Thallium	2	11.19(5)	3	11.19(3)
Lead and Copper Rule				
Lead and Copper Rule (TT)	2	11.26(3)(e), 11.26(4)(k), 11.26(5)(i), 11.26(6)(d), 11.26(7)(f)	3	11.26(2)(d), 11.26(4), 11.26(5)
Lead and Copper Rule Revisions				
Lead and Copper Rule Revisions (TT)	2	11.17(2)(e), 11.17(4)(k), 11.17(5)(l), 11.17(6)(j), 11.17(7)(m), 11.17(8)(f)	3	11.17(3)(d), 11.17(5), 11.17(6)
Exceedance of the lead action level	1	11.17(3)(b)	N/A	N/A
Synthetic Organic Chemicals (SOCs)				
2,4–D	2	11.21(6)	3	11.21(3)(d)
2,4,5–TP (Silvex)	2	11.21(6)	3	11.21(3)(d)
Alachlor	2	11.21(6)	3	11.21(3)(d)

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Atrazine	2	11.21(6)	3	11.21(3)(d)
Benzo(a)pyrene (PAHs)	2	11.21(6)	3	11.21(3)(d)
Carbofuran	2	11.21(6)	3	11.21(3)(d)
Chlordane	2	11.21(6)	3	11.21(3)(d)
Dalapon	2	11.21(6)	3	11.21(3)(d)
Di (2-ethylhexyl) adipate	2	11.21(6)	3	11.21(3)(d)
Di (2-ethylhexyl) phthalate	2	11.21(6)	3	11.21(3)(d)
Dibromochloropropane	2	11.21(6)	3	11.21(3)(d)
Dinoseb	2	11.21(6)	3	11.21(3)(d)
Dioxin (2,3,7,8-TCDD)	2	11.21(6)	3	11.21(3)(d)
Diquat	2	11.21(6)	3	11.21(3)(d)
Endothall	2	11.21(6)	3	11.21(3)(d)
Endrin	2	11.21(6)	3	11.21(3)(d)
Ethylene dibromide	2	11.21(6)	3	11.21(3)(d)
Glyphosate	2	11.21(6)	3	11.21(3)(d)
Heptachlor	2	11.21(6)	3	11.21(3)(d)
Heptachlor epoxide	2	11.21(6)	3	11.21(3)(d)
Hexachlorobenzene	2	11.21(6)	3	11.21(3)(d)
Hexachlorocyclo-pentadiene	2	11.21(6)	3	11.21(3)(d)
Lindane	2	11.21(6)	3	11.21(3)(d)
Methoxychlor	2	11.21(6)	3	11.21(3)(d)
Oxamyl (Vydate)	2	11.21(6)	3	11.21(3)(d)
Pentachlorophenol	2	11.21(6)	3	11.21(3)(d)
Picloram	2	11.21(6)	3	11.21(3)(d)
Polychlorinated biphenyls (PCBs)	2	11.21(6)	3	11.21(3)(d)
Simazine	2	11.21(6)	3	11.21(3)(d)
Toxaphene	2	11.21(6)	3	11.21(3)(d)
Volatile Organic Chemicals (VOCs)				
Benzene	2	11.21(6)	3	11.21(3)(b)
Carbon tetrachloride	2	11.21(6)	3	11.21(3)(b)
Chlorobenzene (monochlorobenzene)	2	11.21(6)	3	11.21(3)(b)
o-Dichlorobenzene	2	11.21(6)	3	11.21(3)(b)
p-Dichlorobenzene	2	11.21(6)	3	11.21(3)(b)
1,2-Dichloroethane	2	11.21(6)	3	11.21(3)(b)
1,1-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
cis-1,2-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
trans-1,2-Dichloroethylene	2	11.21(6)	3	11.21(3)(b)
Dichloromethane	2	11.21(6)	3	11.21(3)(b)
1,2-Dichloropropane	2	11.21(6)	3	11.21(3)(b)
Ethylbenzene	2	11.21(6)	3	11.21(3)(b)
Styrene	2	11.21(6)	3	11.21(3)(b)
Tetrachloroethylene	2	11.21(6)	3	11.21(3)(b)
Toluene	2	11.21(6)	3	11.21(3)(b)
1,2,4-Trichlorobenzene	2	11.21(6)	3	11.21(3)(b)
1,1,1-Trichloroethane	2	11.21(6)	3	11.21(3)(b)
1,1,2-Trichloroethane	2	11.21(6)	3	11.21(3)(b)
Trichloroethylene	2	11.21(6)	3	11.21(3)(b)
Vinyl chloride	2	11.21(6)	3	11.21(3)(b)
Xylenes (total)	2	11.21(6)	3	11.21(3)(b)
Radionuclides				
Beta/photon emitters	2	11.22(5)	3	11.22(3)(c)
Alpha emitters	2	11.22(5)	3	11.22(3)(b)
Combined radium (226 & 228)	2	11.22(5)	3	11.22(3)(b)
Uranium	2	11.22(5)	3	11.22(3)(b)
Disinfection Byproducts (DBPs), Disinfection Byproduct Precursors, Disinfectant Residuals Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). The Department sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).				
Total trihalomethanes (TTHMs)	2	11.25(1)(g)	3	11.25(1)(c)
Haloacetic Acids (HAA5)	2	11.25(1)(g)	3	11.25(1)(c)
Bromate	2	11.25(3)(c)	3	11.25(3)(e)
Chlorite	2	11.25(2)(c)	3	11.25(2)(e)
Chlorine (MRDL)	2	11.23(1)(e)	3	11.23(1)(c)
Chloramine (MRDL)	2	11.23(1)(e)	3	11.23(1)(c)
Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	11.23(2)(e)(ii)	2[6], 3	11.23(2)(c)
Chlorine dioxide (MRDL), where sample(s) in distribution system the next day are also above MRDL	1[7]	11.23(2)(e)(i)	1	11.23(2)(c)

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Control of DBP precursors—TOC (TT)	2	11.24(9)	3	11.24(3)
Disinfection profiling and benchmarking	2	11.8(4)(d), 11.8(5)(d)	3	11.8(4), 11.8(5)
Development of monitoring plan	N/A	N/A	3	11.25(1)(d)
Other Treatment Techniques				
Acrylamide (TT)	2	11.21(6)(b)	N/A	N/A
Epichlorohydrin (TT)	2	11.21(6)(b)	N/A	N/A
Water hauler failure to operate in accordance with Department-approved operational plan	2	11.41(3)(a)	N/A	N/A
Storage Tanks (TT)	2	11.28(4)(b)	N/A	N/A
Unregulated Contaminant Monitoring[8]				
Unregulated contaminants	N/A	N/A	3	11.47
Nickel	N/A	N/A	3	11.19(3)(b)
Public Notification for Variances and Exemptions				
Operation under a variance or exemption	3	11.43(10)(f)[9]	N/A	N/A
Violation of conditions of a variance or exemption	2	11.43(10)(f)[10]	N/A	N/A
Other Situations Requiring Public Notification				
Fluoride secondary maximum contaminant level (SMCL) exceedance	3	11.19(7)	N/A	N/A
Exceedance of nitrate MCL for non-community water systems, as allowed by the Department	1	11.18(2)(d)	N/A	N/A
Availability of unregulated contaminant monitoring data	3	11.47	N/A	N/A
Waterborne disease outbreak	1	11.3(81)	N/A	N/A
Other waterborne emergency[11]	1	N/A	N/A	N/A
Source Water Sample Positive for GWR Fecal indicators: *E. coli*, enterococci, or coliphage	1	11.11(4)(d)(i), 11.11(5)(c)(i)	N/A	N/A
Waiver of Disinfection	N/A	N/A	N/A	11.13(2)
Backflow Prevention and Cross-Connection Control Rule violations	2	11.39(6)(a)	3	11.39(6)(b)
Direct Potable Reuse Rule violations	1, 2	11.14	3	11.14

TABLE 11.33-V TABLE OF CPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1]				
Contaminant	MCL/MRDL/TT violations		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Other situations as determined by the Department	1, 2, 3[12]	N/A	N/A	N/A

1 Violations and other situations not listed in this table (e.g., failure to prepare Consumer Confidence Reports) do not require notice, unless otherwise determined by the Department. The Department may, at its discretion, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations specified in Table 11.33-V, as authorized under 11.33(2)(a) and 11.33(3)(a).

2 The term "Violations of Colorado Primary Drinking Water Regulations" is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

3 Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under 11.8(2)(b) are required to consult with the Department no later than 24 hours after learning of the violation. Based on this consultation, the Department may elevate the violation to Tier 1. If the supplier is unable to make contact with the Department in the 24-hour period, the violation is automatically elevated to Tier 1.

4 Failure to collect three or more samples for Cryptosporidium analysis requires a special Tier 2 public notice as specified in 11.10(2)(e). All other monitoring and testing procedure violations require Tier 3 public notice.

5 Failure to collect a confirmation sample no later than 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires Tier 1 public notice. Other monitoring violations for nitrate require Tier 3 public notice.

6 Failure to monitor for chlorine dioxide at the entry point the day after exceeding the MRDL at the entrance to the distribution system requires Tier 2 public notice.

7 If any daily sample collected at the entry point exceeds the MRDL for chlorine dioxide and one or more samples collected in the distribution system the next day exceed the MRDL, Tier 1 public notice is required. Failure to collect the required samples in the distribution system after the MRDL is exceeded at the entry point also triggers Tier 1 public notice.

8 Some water systems must monitor for certain unregulated contaminants under 11.47.

9 This citation refers to §§1415 and 1416 of the Safe Drinking Water Act. §§1415 and 1416 require that "a schedule prescribed . . . for a public water system granted a variance shall require compliance by the system . . ."

10 In addition to §§1415 and 1416 of the Safe Drinking Water Act, 11.43(3) of the Colorado Primary Drinking Water Regulations specifies the items and schedule milestones that must be included in a variance for small systems.

11 Other waterborne emergencies require a Tier 1 public notice under 33.2(a) for situations that do not meet the definition of a waterborne disease outbreak specified in 11.3, but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

12 The Department may place other situations in any tier believed appropriate, based on threat to public health.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Colorado Primary Drinking Water Regulations			
Microbiological Contaminants			
Fecal Indicators (GWR) 1. *E. coli* 2. Enterococci 3. Coliphage)	None	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short- term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Groundwater Rule (GWR) TT violations	None	TT	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
A violation that occurred for failure to conduct an assessment not triggered by the presence of *E. coli* and/or violations for corrective action		TT	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that are found. [THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment(s).

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
A violation that occurred for failure to conduct an assessment triggered by the presence of *E. coli* and/or violations for corrective action[3]		TT	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We violated the standard for *E. coli,* indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct a detailed assessment to identify problems and to correct any problems that are found. [THE SUPPLIER MUST ALSO INCLUDE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment that we conducted.
E. coli MCL violations	Zero	See footnote 2	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.
A violation occurred for failure to conduct seasonal start-up procedures	None	TT	Failure to perform the required start-up procedures prior to serving water to the public has the potential to distribute contaminated water. When our system shuts down operation, the lack of pressure in our pipes can allow the entry of bacteria and other disease-causing microorganisms into the drinking water. By performing start-up procedures such as flushing the pipes, disinfecting the water, and collecting a coliform bacteria sample before we open, we can be sure that we are providing you with safe water.
Turbidity	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
Disinfectant residual	N/A	TT (in the distribution system)	Disinfectant residual serves as one of the final barriers to protect public health. Lack of an adequate disinfectant residual may increase the likelihood that disease-causing organisms are present.
Surface Water Treatment Rule, Surface Water Treatment Rule: Filter Backwash Recycle Rule, and Surface Water Treatment Rule: Enhanced Treatment for Cryptosporidium Rule violations			
Giardia lamblia	Zero	TT[3]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Viruses			
Heterotrophic plate count (HPC) bacteria[4]			

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Legionella			
Cryptosporidium			
Inorganic Chemicals			
Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic	0	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (10 µm)	7 MFL	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Total Nitrate and Nitrite	10	10	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Lead and Copper			
Lead	Zero	TT[5]	Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects. Adults can have increased risks of heart disease, high blood pressure, kidney or nervous system problems.
Copper	1.3	TT[6]	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Synthetic Organic Chemicals (SOCs)			
2,4–D	0.07	0.07	Some people who drink water containing the weed killer 2,4–D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5–TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
Di (2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloro-propane (DBCP)	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Dioxin (2,3,7,8-TCDD)	Zero	$3x10^{-8}$	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Ethylene dibromide	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Hexachlorocyclo-pentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
Pentachlorophenol	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Polychlorinated biphenyls (PCBs)	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals (VOCs)			
Benzene	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (monochloro- benzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Vinyl chloride	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
Radionuclides			
Beta/photon emitters	Zero	4 mrem/yr	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Alpha emitters	Zero	15 pCi/L	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (226 & 228)	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Zero	30µg/L	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Disinfection Byproducts (DBPs), Disinfection Byproduct Precursors, Disinfectant Residuals Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). The Department sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).[18]			
Total trihalomethanes (TTHMs)	N/A	0.080[7]	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
Haloacetic Acids (HAA)	N/A	0.060[8]	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Bromate	Zero	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chloramines	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Chlorine dioxide, where any 2 consecutive daily samples collected at the entrance to the distribution system are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system, which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
Chlorine dioxide, where one or more distribution system samples are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the State standard within the distribution system, which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
Control of DBP precursors (TOC)	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Other Treatment Techniques			
Acrylamide	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Epichlorohydrin	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Backflow Prevention and Cross-Connection Control Rule	None	TT	Uncontrolled cross-connections can lead to a back pressure or siphonage event that may allow contaminants or disease-causing organisms to enter the drinking water, which can cause diarrhea, nausea, cramps, and associated headaches.
Storage Tank Rule	None	TT	Inadequately maintained storage tanks, identified through inspections, may allow contaminants or disease-causing organisms to enter the drinking water, which can cause diarrhea, nausea, cramps, and associated headaches.
Failure to Correct a Significant Deficiency	None	TT	An uncorrected significant deficiency may allow contaminants or disease-causing organisms to enter the drinking water, which can cause diarrhea, nausea, cramps, and associated headaches.

TABLE 11.33-VI TABLE OF STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION			
Contaminant	MCLG mg/L	MCL mg/L	Standard health effects language for public notification
Direct Potable Reuse Rule			
Critical control point for pathogen reduction of *Cryptosporidium*, *Giardia lamblia*, and/or viruses	None	TT	Inadequately treated water from direct potable reuse may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches
Critical control point for chemical reduction	None	TT	The direct potable reuse processes are intended to remove or reduce the following list of compounds (Target chemicals list from application). Inadequately treated water from direct potable reuse may contain elevated levels of the compounds above. These compounds can cause adverse health effects including (Target chemical health effects language as defined in the *Direct Potable Reuse Policy* and included in department approval). Inadequately treated water from direct potable reuse may also contain elevated levels of unknown compounds that may be present in treated wastewater. Because these chemicals are not identified, the health effects for these compounds are unknown.

1 If the supplier is collecting at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. If the supplier is collecting fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.

2 E. coli-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an E. coli-positive routine sample, failure to collect all required repeat samples following an E. coli-positive routine sample, or failure to analyze a total-coliform positive repeat sample for E. coli.

3 11.8 treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

4 The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfection in the distribution system.

5 Action Level = 0.015 mg/L

6 Action Level = 1.3 mg/L

7 The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

8 The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

11.34 CONSUMER CONFIDENCE REPORT (CCR) RULE

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11.34(2) Content Requirements for the CCR

(a) General Content Requirements for the CCR

(i) The supplier must include data collected for compliance purposes during the previous calendar year in the CCR.

(A) If the supplier sampled for a contaminant less frequently than annually, the supplier must include the date and result(s) of the most recent sampling for that contaminant.

(I) The supplier must include a brief statement that explains that the data presented are from the most recent sampling conducted.

(II) The supplier is not required to include data older than five years.

(ii) The supplier must include all of the following definitions in the CCR:

(A) *Maximum Contaminant Level Goal* (MCLG) means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(B) *Maximum Contaminant Level* (MCL) means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(iii) If the CCR includes any of the following terms, the supplier must include the applicable definition(s) in the CCR:

(A) *Treatment Technique* means a required process intended to reduce the level of a contaminant in drinking water.

(B) *Action Level* means the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system must comply with.

(C) *Maximum residual disinfectant level goal* (MRDLG) means the level of a drinking water disinfectant below which, there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(D) *Maximum residual disinfectant level* (MRDL) means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(E) *Variances and Exemptions* mean that the supplier has Department permission to not meet an MCL or a treatment technique requirement under certain conditions.

(F) *Level 1 assessment* means a study of the water system to identify possible problems and determine, if possible, why total coliform bacteria have been found in our water system.

(G) *Level 2 assessment* means a very detailed study of the water system to identify possible problems and determine, if possible, why an *E. coli* MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

(iv) The supplier must include in the CCR the telephone number for the system that the consumer may call for additional information about the CCR.

(v) The supplier must include in the CCR information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings).

(vi) For systems supplying a large proportion of non-English speaking consumers, as determined by the Department, the supplier must include either of the following in the CCR:

(A) Information in the appropriate language(s) regarding the importance of the CCR.

(B) A telephone number or address where the consumer may contact the supplier to obtain a translated copy of the CCR or request assistance in the appropriate language.

(vii) For each violation that occurs during the year covered by the CCR specified in 11.34(2)(d)(vi), the supplier must include a clear and readily understandable explanation of each violation, any potential adverse health effects, and the steps the supplier has taken to correct the violation.

(viii) For CCRs due on or after July 1, 2025, the supplier must include in the CCR a statement that a service line inventory has been prepared as required under 11.17(2)(a) and include instructions to access the service line inventory, including inventories consisting only of a statement under 11.17(2)(b)(i)(C).

(ix) For CCRs due on or after July 1, 2025, the supplier must include in the CCR a statement notifying consumers that complete lead tap sampling data are available for review and must include instructions on how to access the data.

(b) Language Requirements for the CCR

(i) The supplier must include all of the following language in the CCR, exactly as written:

(A) “Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).”

(B) “Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).”

(ii) The supplier must also include in the CCR a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water.

(A) The supplier may use the following language or comparable language:

(I) "The sources of drinking water include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

Contaminants that may be present in source water include:

- Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

- Inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

- Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban storm water runoff, and residential uses.

- Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and also may come from gas stations, urban storm water runoff, and septic systems.

- Radioactive contaminants, which can be naturally occurring or be the result of oil and gas production and mining activities.

In order to ensure that tap water is safe to drink, the Colorado Department of Public Health and Environment prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. The Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health."

(iii) The supplier must include in the CCR a short informational statement about lead in drinking water and its effects on children.

(A) The supplier may use the following language, providing the specific information for the text in brackets, or other Department-approved language written by the supplier:

(I) Lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water and removing lead pipes, but cannot control the variety of materials used in plumbing components in your home. You share the responsibility for protecting yourself and your family from the lead in your home plumbing.

You can take responsibility by identifying and removing lead materials within your home plumbing and taking steps to reduce your family's risk. Before drinking tap water, flush your pipes for several minutes by running your tap, taking a shower, doing laundry or a load of dishes. You can also use a filter certified by an American National Standards Institute accredited certifier to reduce lead in drinking water. If you are concerned about lead in your water and wish to have your water tested, contact [NAME OF UTILITY and CONTACT INFORMATION]. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available at http://www.epa.gov/safewater/lead.

(c) Source Water Content Requirements for the CCR

(i) The supplier must include all of the following information about each of the system's sources in the CCR:

(A) The type of source (e.g., surface water or groundwater).

(B) The commonly used name(s) of the source(s), if any.

(C) The general location(s) of the source(s).

(D) If a source water assessment has been completed, the supplier must include all of the following:

(I) Notification of the availability of this information.

(II) How to obtain this information.

(III) If the Department has provided a source water assessment, a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the Department or written by the supplier.

(d) Detected Contaminant Content Requirements for the CCR

(i) The supplier must include in the CCR information on all of the following detected contaminants, except Cryptosporidium:

(A) Regulated contaminants.

(B) Unregulated contaminants that the supplier must sample for under 11.47.

(C) Unregulated detected contaminants in finished water that the supplier must monitor for under 11.14

(ii) The information for detected contaminants must be displayed in a table or several adjacent tables.

(A) If the supplier chooses to include information related to any additional sample results not required by 11.34(2)(d)(i), the supplier must display this information separately from the table(s) of detected contaminants.

(iii) For each regulated contaminant, the table(s) of detected contaminants must include all of the following:

(A) The MCL expressed as a whole number as specified in Table 11.34-I.

(I) If there is no MCL for a detected contaminant, the supplier must show in the table(s) that there is a treatment technique, or specify the action level, applicable to that contaminant.

(B) The MCLG expressed in the same units as the MCL.

(C) For contaminants subject to an MCL, except turbidity, total coliforms and *E. coli*, the highest contaminant level used to determine compliance and the range of detected levels as follows:

(I) If compliance with the MCL is determined annually or less frequently, the highest detected level and the range of all detected levels expressed in the same units as the MCL.

(II) If compliance with the MCL is determined based on a RAA, the RAA and range of all detected sample results expressed in the same units as the MCL.

(III) If compliance with the MCL is determined based on an LRAA, the highest LRAA and the range of all LRAAs expressed in the same units as the MCL.

(a) For the TTHM and HAA5 MCLs, the supplier must also include the range of all individual sample results expressed in the same units as the MCL.

(b) For the TTHM and HAA5 MCLs, if more than one LRAA exceeds the MCL, the supplier must include the LRAAs for all sampling locations that exceeded the MCL.

(D) For turbidity reported under 11.8, the highest single turbidity measurement and the lowest monthly percentage of samples meeting the turbidity limit specified in 11.8 for the filtration technology being used.

(I) The supplier should include an explanation of the reasons for measuring turbidity.

(E) For lead and copper, the 90^{th} percentile value(s) and the number of sampling sites that exceeded the action levels.

(F) For *E. coli*, the total number of E. coli-positive samples that are not special purpose samples, collected under 11.16.

(iv) For each unregulated contaminant for which the supplier must monitor, the table(s) of detected contaminants must include the average of the sample results and the range of all detected levels.

(A) The supplier may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(v) The table(s) of detected contaminants must also include the likely source(s) of the contaminants to the best of the supplier's knowledge.

(A) If the supplier lacks specific information on the likely source, the supplier must include one or more of the typical sources for that contaminant listed in Table 11.34-I that is most applicable to the system.

(vi) The table(s) of detected contaminants must clearly identify any data that show a violation of any of the requirements listed below that occurred during the year covered by the CCR:

(A) MCLs.

(B) MRDLs.

(C) Treatment techniques.

(D) Monitoring and reporting of compliance data.

(E) Filtration and disinfection as specified in 11.8.

(F) Recordkeeping of compliance data.

(G) Special monitoring requirements as specified in 11.47 and 11.20.

(H) If applicable, the terms of a variance, an exemption, or an administrative or judicial order.

(vii) If a system supplies water through multiple hydraulically independent distribution systems that use different sources, the supplier should identify each separate distribution system in the CCR and should include a separate column for each independent distribution system in the table(s) of detected contaminants.

(A) Alternatively, the supplier may produce separate CCRs that only include data for each independent distribution system.

(e) Additional Content Requirements for the CCR

(i) If the supplier is required to comply with 11.11:

(A) The supplier must include all of the following information in the CCR about any significant deficiency that has not been corrected at the time of delivery of the CCR:

(I) The nature of the significant deficiency(s).

(II) The date(s) the significant deficiency(s) was identified by the Department.

(III) For each significant deficiency that was required to be addressed under 11.38(3) that has not been addressed, the Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.

(B) The supplier must continue to include the information under 11.34(2)(e)(i)(A) each year until the Department determines that the significant deficiency was corrected under 11.38(3).

(C) If directed by the Department, the supplier must include all of the following information for any significant deficiency that was corrected before the CCR is issued:

(I) Inform the customers of the significant deficiency.

(II) How the deficiency was corrected.

(III) The date of correction.

(D) The supplier must include all of the following information in the CCR about any fecal indicator-positive groundwater source sample:

(I) The source of the fecal contamination, if the source is known.

(II) The date(s) of the fecal indicator-positive groundwater source sample(s).

(III) For each fecal indicator-positive contamination event in the groundwater source that was required to be addressed under 11.11(6)(b) that has not been addressed, the Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.

(IV) If the fecal contamination in the groundwater source was addressed under 11.11(6), the date of such action.

(V) The applicable potential health effects language specified in Table 11.34-I for a fecal indicator-positive groundwater source sample(s) that was not invalidated by the Department.

(E) The supplier must continue to include the information specified in 11.34(2)(e)(i)(D) each year until the Department determines that the fecal contamination in the groundwater source was addressed under 11.11(6)(b).

(ii) If the supplier has nitrate sample result(s) greater than (>) 5 mg/L but less than (<) the MCL, the supplier must include a short informational statement about nitrate's effect on children.

(A) The supplier may use the following language or other Department-approved language written by the supplier:

(I) "Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."

(iii) If the supplier has arsenic sample result(s) greater than (>) 0.005 mg/L but less than or equal to (≤) 0.010 mg/L, the supplier must include a short informational statement about arsenic.

(A) The supplier may use the following language or other Department-approved language written by the supplier:

(I) "While your drinking water meets the EPA's standard for arsenic, it does contain low levels of arsenic. The EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. The EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems."

(iv) If the supplier sampled for *Cryptosporidium* and the sample results show that *Cryptosporidium* may be present in the source water or the finished water, the supplier must include all of the following:

(A) A summary of the sample results.

(B) An explanation of the significance of the sample results.

(v) If the supplier sampled for radon and the sample results show that radon may be present in the finished water, the supplier must include all of the following:

(A) The sample results.

(B) An explanation of the significance of the sample results.

(vi) If a supplier is operating under a variance or an exemption as specified in 11.43, the supplier must include all of the following:

(A) An explanation of the reasons for the variance or exemption.

(B) The date on which the variance or exemption was issued.

(C) A brief status report on the steps the supplier is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption.

(D) A notice of any opportunity for public input in the review or renewal, of the variance or exemption.

(vii) For surface water systems, if the supplier failed to install adequate filtration or disinfection equipment or processes, or has had a failure of such equipment or processes which are a violation as specified in 11.8, the supplier must include the following language exactly as written as part of the explanation of potential adverse health effects:

(A) "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(viii) If the supplier failed to take one or more actions for lead and copper control as specified in 11.17 or 11.26, the supplier must include the applicable language from Table 11.34-I.

(ix) If the supplier failed to comply with the acrylamide and epichlorohydrin certification requirements as specified in 11.21(5), the supplier must include the applicable language from Table 11.34-I.

(x) The supplier must include a clear and readily understandable explanation of any violation specified in 11.34(2)(d)(vi), including the length of the violation, any potential adverse health effects, and the actions the supplier has taken to correct the violation.

(A) To describe the potential adverse health effects, the supplier must include the applicable language from Table 11.34-I.

(xi) If the supplier has collected additional voluntary samples and the sample results show the presence of other contaminants in the finished water, the Department strongly encourages the supplier to report any sample results which may show a health concern.

(A) To determine if results may show a health concern, the Department recommends that the supplier find out if EPA has proposed a National Primary Drinking Water Regulation or has issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791).

(B) Detects above a proposed MCL or health advisory level show possible health concerns. For such contaminants, the Department recommends that the supplier include all of the following:

(I) The sample results.

(II) An explanation of the significance of the sample results noting the existence of a health advisory or a proposed regulation.

(xii) If a backflow prevention and cross-connection control violation occurs under 11.39(6), the supplier must include the following.

(A) The following language exactly as written:

(I) “We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross-connections can lead to inadvertent contamination of the drinking water.”

(B) If applicable, one or both of the following statements:

(I) We have installed or permitted an uncontrolled cross-connection.

(II) We experienced a backflow contamination event.

(xiii) If the supplier is required to conduct a Level 1 assessment and/or a Level 2 assessment that is not triggered by an *E. coli* MCL violation, the supplier must include the following:

(A) The following language exactly as written:

(I) “Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.”

(B) The following applicable language for a Level 1 assessment and/or a Level 2 assessment exactly as written, providing the specific information for the text in brackets:

(I) During the past year we were required to conduct [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s). [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s) were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(II) During the past year [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were required to be completed for our water system. [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(xiv) If the supplier is required to conduct a Level 2 assessment that is triggered by an *E. coli* MCL violation, the supplier must include the following language exactly as written, providing the specific information for the text in brackets:

(A) "*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments."

(B) We were required to complete a Level 2 assessment because we found *E. coli* in our water system. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(xv) If a treatment technique violation occurs under 11.16(11)(b)(i), the supplier must include one or both of the following statements, as applicable:

(A) During the past year we failed to conduct all of the required assessment(s).

(B) During the past year we failed to correct all identified sanitary defects that were found during the assessment.

(xvi) If an *E. coli*-positive sample has not violated the *E. coli* MCL, in addition to completing the table in 11.34(2)(d), the supplier must include a statement that explains that although they have detected *E. coli*, they are not in violation of the *E. coli* MCL.

(xvii) If an *E. coli* MCL violation occurs, in addition to completing the table in 11.34(2)(d), the supplier must include one or more of the following statements, as applicable:

(A) We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(B) We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(C) We failed to take all required repeat samples following an *E. coli*-positive routine sample.

(D) We failed to test for *E. coli* when any repeat sample tests positive for total coliform.

(xviii) If the supplier is subject to the requirements specified in 11.14, the supplier must include the following information:

(A) A description of direct potable reuse.

(B) A description of the supplier's direct potable reuse pathogen and chemical critical control points.

(C) A description or depiction of the service area that is supplied with finished water from the direct potable reuse project.

(xix) The supplier may include additional information necessary for public education consistent with, and not detracting from, the purpose of the CCR.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Microbiological Contaminants						
Total coliform bacteria	TT	N/A	TT	N/A	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution.
Fecal Indicators: 1) *E. coli*, 2) enterococci or 3) coliphage	TT	N/A	TT	N/A	Human and animal fecal waste	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short- term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
E. coli	*E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.	N/A	*E. coli*-positive repeat sample following a total coliform-positive routine sample, total coliform-positive repeat sample following an *E. coli*-positive routine sample, failure to collect all required repeat samples following an *E. coli*-positive routine sample, or failure to analyze a total-coliform positive repeat sample for *E. coli*.	0	Human and animal fecal waste	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely-compromised immune systems.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Total organic carbon (ppm)	TT	N/A	TT	N/A	Naturally present in the environment.	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by products. These byproducts include trihalomethanes (TTHMs) and haloacetic acids (HAA5s). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU)	TT	N/A	TT	N/A	Soil runoff.	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Disinfectant residual[2]	TT (in the distribution system)	N/A	TT (in the distribution system)	N/A	Water additive used to control microbes.	Disinfectant residual serves as one of the final barriers to protect public health. Lack of an adequate disinfectant residual may increase the likelihood that disease-causing organisms are present.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Radionuclides						
Beta/photon emitters (mrem/yr)	4 mrem/yr	N/A	4	0	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/L)	15 pCi/L	N/A	15	0	Erosion of natural deposits.	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/L)	5 pCi/L	N/A	5	0	Erosion of natural deposits.	Some people who drink water containing radium -226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (µg/L)	30 µg/L	N/A	30	0	Erosion of natural deposits.	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Chemicals						
Antimony (ppb)	0.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Arsenic (ppb)	0.010	1000	10[4]	0[4]	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL	N/A	7	7	Decay of asbestos cement water mains; Erosion of natural deposits.	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	N/A	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	0.004	1000	4	4	Discharge from metal refineries and coal burning factories; Discharge from electrical, aerospace, and defense industries.	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Bromate (ppb)	0.010	1000	10	0	By-product of drinking water disinfection.	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Cadmium (ppb)	0.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints.	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Chloramines (ppm)	MRDL = 4	N/A	MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	N/A	MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide (ppb)	MRDL = 0.8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes.	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorite (ppm)	1	N/A	1	0.8	By-product of drinking water disinfection.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Chromium (ppb)	0.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits.	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL=1.3	N/A	AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	0.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4.0	N/A	4.0	4.0	Erosion of natural deposits; Water additive that promotes strong teeth; Discharge from fertilizer and aluminum factories.	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Lead (ppb)	AL=0.015	1000	AL=15	0	Corrosion of household plumbing systems; Erosion of natural deposits.	Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects. Adults can have increased risks of heart disease, high blood pressure, kidney or nervous system problems.
Mercury (inorganic) (ppb)	0.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate (ppm)	10	N/A	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	N/A	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Selenium (ppb)	0.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	0.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Chemicals (SOCs)						
2,4-D (ppb)	0.07	1000	70	70	Runoff from herbicide used on row crops.	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP (Silvex)(ppb)	0.05	1000	50	50	Residue of banned herbicide.	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	N/A	N/A	TT	0	Added to water during sewage/wastewater treatment.	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Alachlor (ppb)	0.002	1000	2	0	Runoff from herbicide used on row crops.	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	0.003	1000	3	3	Runoff from herbicide used on row crops.	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (PAH) (nanograms/L)	0.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines.	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	0.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa.	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	0.002	1000	2	0	Residue of banned termiticide.	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	0.2	1000	200	200	Runoff from herbicide used on rights of way.	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Di(2-ethylhexyl) adipate (ppb)	0.4	1000	400	400	Discharge from chemical factories.	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects, such as weight loss, liver enlargement or possible reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	0.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloro-propane (ppt)	0.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	0.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables.	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	0.02	1000	20	20	Runoff from herbicide use.	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin (2,3,7,8-TCDD) (ppq)	0.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; discharge from chemical factories.	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Endothall (ppb)	0.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	0.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	N/A	TT	0	Discharge from industrial chemical factories; an impurity of some water treatment chemicals.	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	0.00005	1,000,000	50	0	Discharge from petroleum refineries.	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	0.7	1000	700	700	Runoff from herbicide use.	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	0.0004	1,000,000	400	0	Residue of banned pesticide.	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Heptachlor epoxide (ppt)	0.0002	1,000,000	200	0	Breakdown of heptachlor.	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	0.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories.	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachloro-cyclopentadiene (ppb)	0.05	1000	50	50	Discharge from chemical factories.	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	0.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	0.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl (Vydate) (ppb)	0.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes.	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
PCBs (Polychlorinated biphenyls) (ppt)	0.0005	1,000,000	500	0	Runoff from landfills; discharge of waste chemicals.	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachloro-phenol (ppb)	0.001	1000	1	0	Discharge from wood preserving factories.	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	0.5	1000	500	500	Herbicide runoff.	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	0.004	1000	4	4	Herbicide runoff.	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	0.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle.	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals (VOCs)						

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Benzene (ppb)	0.005	1000	5	0	Discharge from factories; leaching from gas storage tanks and landfills.	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	0.005	1000	5	0	Discharge from chemical plants and other industrial activities.	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (ppb)	0.1	1000	100	100	Discharge from chemical and agricultural chemical factories.	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	0.6	1000	600	600	Discharge from industrial chemical factories.	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	0.075	1000	75	75	Discharge from industrial chemical factories.	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	0.005	1000	5	0	Discharge from Industrial chemical factories.	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
1,1-Dichloroethylene (ppb)	0.007	1000	7	7	Discharge from industrial chemical factories.	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	0.07	1000	70	70	Discharge from industrial chemical factories.	Some people who drink water containing cis-1,2- dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	0.1	1000	100	100	Discharge from industrial chemical factories.	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	0.005	1000	5	0	Discharge from pharmaceutical and chemical factories.	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	0.7	1000	700	700	Discharge from petroleum refineries.	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Haloacetic Acids (HAA) (ppb)	0.060	1000	60	N/A	By-product of drinking water disinfection.	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Styrene (ppb)	0.1	1000	100	100	Discharge from rubber and plastic factories; leaching from landfills.	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloro-ethylene (ppb)	0.005	1000	5	0	Discharge from factories and dry cleaners.	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichloro-benzene (ppb)	0.07	1000	70	70	Discharge from textile-finishing factories.	Some people who drink water containing 1,2,4- trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	0.2	1000	200	200	Discharge from metal degreasing sites and other factories.	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	0.005	1000	5	3	Discharge from industrial chemical factories.	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

TABLE 11.34-I TABLE OF REGULATED CONTAMINANTS						
Contaminant (units)	MCL (in mg/L unless otherwise noted)	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Trichloro-ethylene (ppb)	0.005	1000	5	0	Discharge from metal degreasing sites and other factories.	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs (Total trihalomethanes) (ppb)	0.080	1000	80	N/A	Byproduct of drinking water disinfection.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm)	1	N/A	1	1	Discharge from petroleum factories.	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	0.002	1000	2	0	Leaching from PVC piping; discharge from plastics factories.	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	N/A	10	10	Discharge from petroleum factories; discharge from chemical factories.	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

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11.36 RECORDKEEPING REQUIREMENTS RULE

11.36(4) Additional Recordkeeping Requirements by Rule

(a) Recordkeeping Requirements for Monitoring Plans

For each sample result, the supplier must maintain the monitoring plan specified in 11.5 under which the sample was collected for the same time period that the sample result is required to be maintained.

(b) Recordkeeping Requirements for the Surface Water Treatment Rules

(i) The supplier must maintain all of the following information for at least three years:

(A) The results of individual filter monitoring collected under 11.8(2)(g).

(B) Any notification to the Department that the supplier will not conduct source water monitoring due to meeting the criteria specified in 11.10(2)(a)(v).

(C) The results of treatment monitoring associated with microbial toolbox options collected under 11.10(5)(b) through 11.10(5)(o), as applicable.

(ii) The supplier must maintain all of the following information for at least three years after bin classification under 11.10(3)(b):

(A) The initial round of source water monitoring results collected under 11.10(2).

(B) The second round of source water monitoring results collected under 11.10(2).

(iii) The supplier must maintain the records of turbidity sample results collected under 11.8 for at least five years.

(iv) The supplier must maintain the following recycle flow information:

(A) A copy of the recycle notification and information submitted to the Department under 11.9(4).

(B) A list of all recycle flows and the frequency with which they are returned.

(C) The average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(D) The typical filter run length and a written summary of how filter run length is determined.

(E) The type of treatment provided for the recycle flow.

(F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(v) The supplier must maintain all of the following information indefinitely:

(A) The results of the disinfection profile, including raw data and analysis, specified in 11.8(4).

(B) The results of the disinfection benchmark, including raw data and analysis, specified in 11.8(5).

(c) Recordkeeping Requirements for the Groundwater Rules

(i) The supplier must maintain all of the following information for at least five years:

(A) For each minimum residual disinfection concentration treatment technique requirement sample collected under 11.11(2)(c):

(I) The date, place, and time of sample collection, and the name of the person(s) who collected and analyzed the sample;

(II) The analytical technique/method used; and

(III) The results of the analyses.

(B) Documentation specified in 11.11(2)(e)(i)(C) relating to any entry point minimum disinfection treatment technique violation.

(C) For systems operating under a disinfection waiver under 11.13, all records of all chlorination activities including:

(I) The date, duration, locations and purpose of each chlorination event; and

(II) The maximum and minimum chlorine dose in mg/L the supplier applied during each chlorination event and the results of any and all residual disinfectant concentration results collected during each chlorination event.

(D) Records of decisions that a total coliform-positive sample result meets Department criteria for distribution system conditions that cause total coliform-positive sample results under 11.11(4)(a)(ii)(B).

(E) Records of invalidation of fecal indicator-positive groundwater source samples under 11.11(4)(e)(i).

(F) For consecutive systems, documentation of notification to wholesalers of total-coliform positive samples specified in 11.11(4)(c)(i) that are not invalidated under 11.16(7).

(G) For systems that provide 4-log treatment of viruses using chemical disinfection and are required to comply with the requirements specified in 11.11(3):

(I) Records of the lowest daily residual disinfectant concentration; and

(II) Records of the date and duration of any failure to maintain the Department-specified minimum residual disinfectant concentration for a period of more than four hours.

(H) For systems that provide 4-log treatment of viruses using alternative treatment methods and are required to comply with 11.11(3):

(I) Records of Department-specified parameters for approved alternative treatment; and

(II) Records of the date and duration of any failure to meet the alternative treatment operating requirements for a period of more than four hours.

(ii) The supplier must maintain all of the following information for at least 10 years:

(A) For all systems that provide 4-log treatment of viruses that are required comply with 11.11(3), records of the Department-approved minimum residual disinfectant concentration.

(B) Documentation of corrective actions required in response to fecal indicator positive triggered source water monitoring sample results under 11.11(6).

(iii) For a system operating under a disinfection waiver, the supplier must maintain records of all correspondence and documentation relating to the requirements specified in 11.13 for as long as the system is operating under the disinfection waiver and for at least five years after waiver withdrawal.

(d) Recordkeeping Requirements for the Revised Total Coliform Rule

(i) The supplier must maintain all of the following information for at least five years after completion of the assessment or corrective action:

(A) Completed assessment forms, regardless of who conducts the assessment.

(B) Documentation of corrective actions completed as a result of those assessments.

(C) Available summary documentation of the sanitary defects and corrective actions as specified in 11.16(9).

(ii) If the supplier collects special purpose samples, the supplier must keep *E. coli*-positive sample results that are representative of water throughout the distribution system and a summary of any related follow-up activities on file for Department review for at least five years.

(iii) If the Department grants an extension to the 24-hour limit for collecting repeat samples, as specified in 11.16(5), the supplier must maintain a record of the repeat sample results for at least five years.

(e) Recordkeeping Requirements for the Disinfection Byproducts Rule

(i) If the supplier was required to complete an IDSE report, the supplier must maintain a complete copy of the IDSE report for at least 10 years after the date that the report was submitted.

(A) If the Department modified the supplier's sampling requirements that were in the system's IDSE report or if the Department approved alternative sampling locations, the supplier must keep a copy of the Department's notification on file for 10 years after the date of the Department's notification.

(B) The supplier must make the IDSE report and any Department notification available for review by the Department or the public.

(ii) If the supplier submitted a 40/30 certification, the supplier must maintain a complete copy of the 40/30 certification for at least 10 years after the date that the certification was submitted.

(A) "40/30 CERTIFICATION" means a historical requirement where the supplier certified to the Department that every individual sample result collected during eight consecutive quarters was less than or equal to (≤) 0.040 mg/L for TTHM and less than or equal to (≤) 0.030 mg/L for HAA5 and no TTHM or HAA5 violations occurred during that time.

(B) The supplier must make the 40/30 certification and any Department notification available for review by the Department or the public.

(f) Recordkeeping Requirements for the Lead and Copper Rule and Revisions

The supplier must maintain the original records of all sample results and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required by 11.17 and 11.26 for at least 12 years.

(g) Recordkeeping Requirements for the Storage Tank Rule

For each completed inspection, the supplier must maintain the inspection summary required by 11.28(3)(f) for at least ten years.

(h) Recordkeeping Requirements for the Public Notification Rule

The supplier must maintain copies of each public notice and certification made to the Department under 11.33 for at least three years after issuance.

(i) Recordkeeping Requirements for the Consumer Confidence Report (CCR) Rule

The supplier must retain copies of each CCR required by 11.34 for at least three years after issuance.

(j) Recordkeeping Requirements for the Sanitary Survey Rule

(i) The supplier must maintain all of the following information regarding sanitary surveys conducted under 11.38 for at least 10 years:

(A) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, a private consultant, or a local, state or federal agency.

(B) Documentation of corrective actions required in response to significant deficiencies and/or violations identified on a sanitary survey under 11.38(3).

(k) Recordkeeping Requirements for the Backflow Prevention and Cross-Connection Control Rule

(i) The supplier must maintain all backflow prevention assembly and backflow prevention method testing, inspection, and maintenance records:

(A) For community water systems, for at least three years.

(B) For non-community water systems, for at least five years.

(ii) The supplier must maintain each annual backflow prevention and cross-connection control program report developed:

(A) For community water systems, for at least three years.

(B) For non-community water systems, for at least five years.

(l) Recordkeeping Requirements for the Water Hauler Rule

(i) The supplier must maintain all of the following information for at least five years for each tank or container:

(A) The date, time, and location of each water loading station used.

(B) The date, time, and location of each water delivery.

(C) The date, time, and result of each residual disinfectant concentration sample collected under 11.41(2)(b).

(D) The date, time, type and quantity of any chemical added to the tank or container containing water intended for delivery.

(E) A maintenance record for all hose materials, hose containers, pumps, fittings and tank and/or container including the date, time and method of cleaning and/or disinfection.

(m) Recordkeeping Requirements for the Variances and Exemptions Rule

The supplier must maintain records concerning a variance or exemption granted under 11.43 for at least five years after the expiration of the variance or exemption.

11.39 BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL RULE

11.39(1) Applicability and Definitions

(a) All public water systems must comply with the requirements specified in this rule.

(b) “BACKFLOW” means the reverse flow of water, fluid, or gas caused by back pressure or back siphonage.

(c) “BACKFLOW PREVENTION ASSEMBLY” means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross-connection and is an in-line field-testable assembly.

(d) “BACKFLOW PREVENTION METHOD” means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross-connection.

(e) “BACKFLOW PREVENTION ANNUAL COMPLIANCE RATIO” means the sum of backflow prevention methods inspected and backflow prevention assemblies tested during the calendar year divided by the sum of backflow prevention methods and backflow prevention assemblies installed at a cross-connection that were used during the calendar year.

(f) "CERTIFIED CROSS-CONNECTION CONTROL TECHNICIAN" means a person who possesses a valid Backflow Prevention Assembly Tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.

(g) "CONTROLLED CROSS-CONNECTION" means a cross-connection that has a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow.

(h) "SINGLE-FAMILY-RESIDENTIAL" means:

(i) A single living unit that is supplied by its own separate service line; or

(ii) Multiple living units where each individual living unit is supplied by a separate service line; or

(iii) Two separate single living units supplied by a common service line.

(i) "SURVEY COMPLIANCE RATIO" means the total number of connections surveyed, including the number of all non-single-family-residential connections to the public water system with the most protective backflow prevention assembly or method that was not surveyed as specified in 11.39(2)(c), divided by the total number of non-single-family-residential connections to the public water system and connections within the supplier's waterworks.

(i) The supplier is not required to include any non-single-family-residential connections identified after October 31 of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(j) "UNCONTROLLED CROSS-CONNECTION" means a cross-connection that does not have a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow.

11.39(2) Backflow Prevention and Cross-Connection Control Program Requirements

(a) The supplier must develop a written backflow prevention and cross-connection control program. The written backflow prevention and cross-connection control program must include all of the following:

(i) The supplier's process for conducting surveys.

(ii) The supplier's legal authority to perform a survey of a customer's property to determine whether a cross-connection is present unless the supplier controls all non-single-family-residential connections to the public water system with the most protective backflow prevention assembly or backflow prevention method.

(iii) The process the supplier will use to select a backflow prevention assembly or backflow prevention method to control a cross-connection.

(iv) The supplier's legal authority to install, maintain, test, and inspect backflow prevention assemblies and/or backflow prevention methods and/or require customers to install, maintain, test, and inspect backflow prevention assemblies and/or backflow prevention methods.

(v) The process the supplier will use to track the installation, maintenance, testing, and inspection of all backflow prevention assemblies and backflow prevention methods used to control cross-connections.

(vi) The process the supplier will use to ensure backflow prevention assemblies are tested by a Certified Cross-Connection Control Technician.

(b) The Department may review and revise the written backflow prevention and cross-connection control program.

(c) The supplier must survey all non-single-family-residential connections to the public water system to determine if the connection is a cross-connection unless the supplier controls that connection with the most protective backflow prevention assembly or backflow prevention method. The supplier must survey all connections within the supplier's waterworks to determine if the connection is a cross-connection.

(i) If the supplier identifies a cross-connection during a survey, the supplier must determine the type of backflow prevention assembly or backflow prevention method to control the cross-connection.

(ii) If the supplier becomes aware of a single-family-residential connection to the public water system that is a cross-connection, the supplier must determine the type of backflow prevention assembly or backflow prevention method to control the cross-connection.

(iii) The supplier must maintain a survey compliance ratio of 1.0 each year.

(iv) The supplier may apply to the Department for an alternative survey compliance ratio.

(A) In the application, the supplier must include all of the following information:

(I) An explanation of why the supplier is unable to comply with the survey compliance ratio of 1.0.

(II) The proposed alternative survey compliance ratios and compliance dates.

(a) The proposed alternative survey compliance ratios must meet the survey compliance ratio of 1.0 within a timeline approved by the Department.

(III) A discussion of the supplier's strategy to achieve the proposed alternative survey compliance ratios and the survey compliance ratio of 1.0 within a timeline specified by the Department.

(B) If the supplier receives written Department-approval for alternative survey compliance ratios, the supplier must comply with any Department-specified requirements in the approval.

11.39(3) Treatment Technique Requirements for the Control of Cross-Connections

(a) If the supplier learns of a suspected or confirmed backflow contamination event, the supplier must notify and consult with the Department on any appropriate corrective measures no later than 24 hours after learning of the backflow contamination event.

(b) The supplier is prohibited from installing or permitting any uncontrolled cross-connection to the distribution system or within the supplier's waterworks.

(c) If the supplier discovers an uncontrolled cross-connection and a suspected or confirmed backflow contamination event has not occurred, the supplier must:

(i) No later than 120 days after its discovery, or within a timeline specified in an alternative schedule, install and maintain or require the customer to install and maintain a backflow prevention assembly or backflow prevention method at the uncontrolled cross-connection, suspend service to the customer, or remove the cross-connection.

(A) The supplier must provide justification for an alternative schedule in the written backflow prevention and cross-connection control program.

(I) For situations not specified in Policy DW-007, Backflow Prevention and Cross-Connection Control, the supplier must consult with the Department for approval of an alternative schedule.

(B) The supplier can either control a discovered cross-connection within a customer's service area by containment or containment by isolation.

(I) "CONTAINMENT" means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross-connection into the public water system is prevented.

(II) "CONTAINMENT BY ISOLATION" means the installation of backflow prevention assemblies or backflow prevention methods at all cross-connections identified within a customer's water system such that backflow from a cross-connection into the public water system is prevented.

(C) The supplier must ensure that all installed backflow prevention assemblies used to control cross-connections are tested by a Certified Cross-Connection Control Technician upon installation.

(D) The supplier must ensure that all installed backflow prevention methods used to control cross-connections are inspected by the supplier or a Certified Cross-Connection Control Technician upon installation.

(d) The supplier must ensure that backflow prevention assemblies used to control cross-connections are tested annually by a Certified Cross-Connection Control Technician and maintained. The supplier must also ensure that backflow prevention methods used to control cross-connections are inspected annually by the supplier or a Certified Cross-Connection Control Technician and maintained. The supplier must achieve a backflow prevention annual compliance ratio of greater than or equal to (≥) 0.90.

(i) No later than 120 days after the supplier is notified of a failed test, or within a timeline specified in an alternative schedule, the supplier must ensure that the backflow prevention assembly that produced the failed test is repaired or replaced and tested, service is suspended to the customer, or the cross-connection is removed.

(A) The supplier must provide justification for an alternative schedule in the written backflow prevention and cross-connection control program.

(I) For situations not specified in Policy DW-007, Backflow Prevention and Cross-Connection Control, the supplier must consult with the Department for approval of an alternative schedule.

(ii) The supplier must ensure that no backflow prevention assembly is present for more than two consecutive calendar years without being tested, service being suspended to the customer, or the cross-connection being removed.

(iii) No later than 120 days after the supplier is notified of an inadequate backflow prevention method, or within a timeline specified in an alternative schedule, the supplier must ensure that the inadequate backflow prevention method is repaired or replaced, service is suspended to the customer, or the cross-connection is removed.

(A) The supplier must provide justification for an alternative schedule in the written backflow prevention and cross-connection control program.

(I) For situations not specified in Policy DW-007, Backflow Prevention and Cross-Connection Control, the supplier must consult with the Department for approval of an alternative schedule.

(iv) The supplier must ensure that no backflow prevention method is utilized for more than two consecutive calendar years without being inspected, service being suspended to the customer, or the cross-connection being removed.

(e) The supplier must control or remove any uncontrolled cross-connection or ensure that any cross-connection is controlled no later than 10 days after being ordered in writing by the Department.

11.39(4) Backflow Prevention and Cross-Connection Control Program Annual Written Report

(a) The supplier must develop a written backflow prevention and cross-connection control program report for the previous calendar year that includes all of the following information:

(i) The total number of non-single-family-residential connections to the public water system and connections within the supplier's waterworks.

(A) The supplier is not required to include any non-single-family-residential connections identified after October 31 of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(ii) The total number of connections surveyed to determine if cross-connections are present.

(iii) The survey compliance ratio.

(iv) The total number of identified cross-connections.

(v) The number of uncontrolled cross-connections identified during the calendar year, including all of the following:

(A) The number of identified uncontrolled cross-connections that were controlled within 120 days of discovery or within a Department-approved alternative schedule.

(B) The number of identified uncontrolled cross-connections that were not controlled within 120 days of discovery or within a Department-approved alternative schedule.

(C) The number of identified uncontrolled cross-connections that are within 120 days of discovery or a Department-approved alternative schedule.

(vi) The number of backflow prevention assemblies and backflow prevention methods installed at cross-connections that were used during the calendar year.

(vii) The number of backflow prevention assemblies used to control cross-connections that were tested by a Certified Cross-Connection Control Technician and backflow prevention methods used to control cross-connections that were inspected during the calendar year.

(viii) The backflow prevention annual compliance ratio.

(ix) The number of backflow prevention assemblies not tested and backflow prevention methods not inspected during the two most recent consecutive calendar years that were not otherwise controlled or removed from the system.

(b) For each calendar year, the supplier must complete the annual backflow prevention and cross-connection control program report no later than May 1 of the following calendar year.

11.39(5) Compliance Determinations for Backflow Prevention and Cross-Connection Control

(a) Compliance with the survey treatment technique requirement is based on the survey compliance ratio.

(i) The supplier is not required to include any non-single-family-residential connections identified after October 31 of the calendar year in the total number of non-single-family-residential connections to the public water system until the following calendar year.

(b) Compliance with the backflow prevention assembly testing and backflow prevention method inspection treatment technique requirement is based on the backflow prevention annual compliance ratio.

11.39(6) Violations for Backflow Prevention and Cross-Connection Control

(a) The following constitute backflow prevention and cross-connection control treatment technique violations:

(i) The supplier fails to notify the Department of any suspected or confirmed backflow contamination event as specified in 11.39(3)(a).

(ii) The supplier installs or permits an uncontrolled cross-connection. Installing or permitting an uncontrolled cross-connection includes any of the following:

(A) The supplier discovers an uncontrolled cross-connection and fails to comply with the requirements specified in 11.39(3)(c).

(B) The supplier fails to comply with the backflow prevention assembly failed test requirements specified in 11.39(3)(d)(i).

(C) The supplier fails to comply with the backflow prevention assembly testing requirements specified in 11.39(3)(d)(ii).

(D) The supplier fails to comply with the backflow prevention method inadequate method requirements specified in 11.39(3)(d)(iii).

(E) The supplier fails to comply with the backflow prevention method inspection requirements specified in 11.39(3)(d)(iv).

(iii) The supplier fails to achieve the backflow prevention annual compliance ratio specified in 11.39(3)(d).

(iv) The supplier fails to comply with a written order from the Department specified in 11.39(3)(e).

(b) The following constitute backflow prevention and cross-connection control violations:

(i) The supplier fails to develop or implement a written backflow prevention and cross-connection control program as specified in 11.39(2).

(ii) The supplier fails to achieve the survey compliance ratio specified in 11.39(2)(c)(iii) or the Department-approved alternative survey compliance ratios.

(iii) The supplier fails to complete an annual backflow prevention and cross-connection control program report as specified in 11.39(4).

11.39(7) Response to Violations for Backflow Prevention and Cross-Connection Control

(a) In the event of a backflow prevention and cross-connection control treatment technique violation, the supplier must:

(i) Notify the Department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 2 public notice as specified in 11.33.

(b) In the event of a backflow prevention and cross-connection control violation, the supplier must:

(i) Notify the Department no later than 48 hours after the violation occurs.

(ii) Distribute Tier 3 public notice as specified in 11.33.

11.45 MCLs, MCLGs, SMCLs, MRDLs, MRDLGs, TRIGGER LEVEL, AND ACTION LEVELS

11.45(7) Trigger Level, Action Levels, and MCLGs for Lead and Copper

The following trigger level for lead and action levels for lead and copper apply to all community and non-transient, non-community water systems.

TABLE 11.45-VIII TRIGGER LEVEL, ACTION LEVELS, AND MCLGs FOR LEAD AND COPPER

Contaminant	Trigger Level (mg/L)	Action level (mg/L)	MCLG (mg/L)
Copper	N/A	1.3	1.3
Lead	0.010	0.015	Zero

11.46 ANALYTICAL REQUIREMENTS AND LABORATORY CERTIFICATION RULE

11.46(9) Lead and Copper Analytical Requirements

The testing requirements and analytical methods for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature are specified in 40 CFR 141.89(a)(1-4).

11.46(12) Certified Laboratories and Laboratory Certification

(a) Certified Laboratories

The requirements for a certified laboratory are specified in 40 CFR 141.28(a).

(b) Laboratory Certification for Inorganic Chemicals

The laboratory certification requirements for inorganic chemicals are specified in 40 CFR 141.23(k)(3).

(c) Laboratory Certification for VOCs

The laboratory certification requirements for VOCs are specified in 40 CFR 141.24(f)(17) and 40 CFR 141.24(f)(20).

(d) Laboratory Certification for SOCs

The laboratory certification requirements for SOCs are specified in 40 CFR 141.24(h)(19).

(e) Laboratory Certification for *Cryptosporidium*, *E. coli*, and Turbidity

The laboratory certification requirements for *Cryptosporidium*, *E. coli*, and turbidity are specified in 40 CFR 141.705(a-c).

(f) Laboratory Certification for Lead and Copper

The laboratory certification requirements for lead and copper are specified in 40 CFR 141.89(a)(1).

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11.63 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: August 14, 2023 rulemaking; Final Action August 14, 2023; Effective Date October 15, 2023

The Water Quality Control Commission made the following revisions in this rulemaking hearing: Adoption of Section 11.17 – Lead and Copper Rule Revisions with amendments to Sections 11.26(1)(a) - Lead and Copper Rule, 11.27(4) - Compositing Samples for Lead and Copper Entry Point Samples, 11.33(1), (2), and (7) - Public Notification Rule, 11.34(2)(a), (b), and (e) - Consumer Confidence Report (CCR) Rule, 11.36(4)(f) - Recordkeeping Requirements Rule, 11.45(7) - Trigger Level, Action Levels, and MCLGs for Lead and Copper, 11.46(9) and (12)(f) - Analytical Requirements and Laboratory Certification Rule, and revisions to 11.39 - Backflow Prevention and Cross-Connection Control Rule, with amendments to section 11.36(4)(j) - Recordkeeping Requirements for the Cross-Connection Control Rule. The provisions of the Colorado Revised Statutes (CRS), section 25-1.5-202, provide specific statutory authority for adoption of these regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4), CRS, the following statement of basis and purpose.

BASIS AND PURPOSE

Background

All suppliers of drinking water in Colorado are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act, (42 U.S.C. 300f et seq.) as well as regulations adopted by the Commission. Colorado, with the Colorado Department of Public Health and Environment (Department) as the administering agency, has been granted primary enforcement authority (primacy) for the public water system supervision program under the federal Safe Drinking Water Act. The Water Quality Control Division (Division) is part of the Department and is responsible for implementing and enforcing the drinking water regulations that are adopted by the Commission. In order to maintain primacy from the EPA, states must also promulgate new federal regulations that are no less stringent than those adopted by the federal government. In this rulemaking the Commission is adopting the Lead and Copper Rule Revisions which are no less stringent than the federally-mandated Lead and Copper Rule Revisions. By retaining primacy, the Department is able to protect public health by ensuring that public water systems provide safe drinking water to Colorado citizens and visitors.

In addition to adopting the federally-mandated Lead and Copper Rule Revisions to maintain primacy, this rulemaking also included revisions to Colorado-specific requirements for backflow prevention and cross-connection control. The Commission adopted these revisions to address outdated references within the Backflow Prevention and Cross-Connection Control Rule, combining compliance ratios for backflow assemblies and methods, and changing the way compliance is tracked and calculated for those assemblies not tested during a given calendar year.

Policies, Handbooks and Guidance and Regulation 11

The Commission adopts regulations that create binding norms or legal obligations of the Department or regulated entities. The Department may develop implementation policies and guidance/handbooks where implementation of Regulation 11 may require interpretation, decision-making flexibility, or a streamlined approach for meeting compliance requirements. These amendments to Regulation 11 include references to guidance/handbooks that the Department intends to develop as part of the ongoing implementation of Regulation 11.

The Division originally adopted WQCD Policy Number 1, *Implementation Policy Framework* (Policy 1) in November 2010 and the associated *Procedure 1* in August 2012; both were prepared in accordance with the Colorado Administrative Procedure Act, Article 4, Title 24 of the CRS.Policy 1 specifically states that implementation policies and associated procedures are not binding regulations and are not to be applied as such. The referenced guidance/handbooks in these amendments are not independent requirements. Violations or other notices of non-compliance cannot be issued against a policy or guidance/handbook. Violations or other notices of non-compliance can, and will, only be issued for a failure to comply with Regulation 11 or an applicable statute (law) included in the CRS. Implementation policies and guidance/handbooks have no compliance expectation.

Lead and Copper Rule Revisions

The Commission replaced the Lead and Copper Rule in Section 11.26 with the Lead and Copper Rule Revisions in Section 11.17. The Lead and Copper Rule Revisions increase public health protection by reducing exposure to lead and copper in drinking water. The Lead and Copper Rule Revisions include the following provisions of the federal regulations as published in the Federal Register, Volume 86, Number 10, January 15, 2021, pages 4198 through 4312, *National Primary Drinking Water Regulations*:

- Additional definitions and recordkeeping and reporting requirements.
- Development and maintenance of a lead service line inventory.
- Establishment of a lead trigger level.
- Changes to lead and copper sample site tier classifications.

- Increased requirements for lead and copper sampling procedures and protocols.
- Additional requirements for lead service line replacement and changes to the rate of lead service line replacement.
- Modifications to optimizing and re-optimizing corrosion control treatment.
- Additional public notification and public education requirements.
- Lead testing in schools and child care facilities.

The amendments adopted by the Commission remain as stringent as the federal requirements for the Lead and Copper Rule Revisions.

By adopting these amendments, the Commission is ensuring the Division can maintain primacy and enforcement authority for the Lead and Copper Rule Revisions when the rule becomes effective on October 16, 2024. A complicating factor is that the EPA has announced plans to strengthen the Lead and Copper Rule Revisions by promulgating the Lead and Copper Rule Improvements prior to the effective date of the Lead and Copper Rule Revisions (86 Fed. Reg. 71,574). As a result, Colorado did not propose more stringent requirements with the exception of establishing one requirement that is more protective than the federal requirements by modifying the Small System Flexibility Compliance Options section to require public water systems to evaluate and identify corrosion control treatment before selecting their compliance option. After EPA promulgates the Lead and Copper Rule Improvements, Colorado will conduct a stakeholder process and consider additional Colorado-specific requirements that are more stringent than the federal requirements.

The Lead and Copper Rule Revisions have been structured so that different elements of the rule will have effective dates that align with the Lead and Copper Rule Improvements. For example, the requirement to complete an initial lead service line inventory by October 16, 2024 will go into effect immediately, whereas requirements that may be modified in the Lead and Copper Rule Improvements, such as tap monitoring requirements, could have a delayed compliance requirement. As a result, the Lead and Copper Rule Revisions also include language staying or extending the rule in case EPA also stays or extends this rule. EPA's intent to modify the rule and effective dates so quickly after a prior final action presents challenges for states and public water systems nationwide. The Division will work closely with the EPA, other states, and stakeholders to address this complexity and transition to the new rule requirements as efficiently as possible.

The Division engaged with stakeholders in 21 virtual meetings between July 2022 and March 2023 to incorporate the Lead and Copper Rule Revisions into proposed regulatory language for Regulation 11. The Division and stakeholders were able to find overall consensus in bringing clarity and organization to the federal requirements while remaining as stringent as the federal rule.

The Commission acknowledges that the Lead and Copper Rule Revisions present complex, data and resource intensive requirements for both public water systems and the Division. As a result, adequate resources will need to be devoted to this rule for successful implementation.

Revisions to Backflow Prevention and Cross-Connection Control Rule

In 2015, the Commission amended the Backflow Prevention Cross-Connection Control (BPCCC) Rule in Section 11.39 to further protect public health and public water systems from potential contamination associated with cross-connections. Furthermore, the Commission continued to ensure public water system compliance with Sections 25-1-114 and 25-1-114.1, CRS. In 2018, the Commission amended the BPCCC Rule to equate duplexes as single family homes. The 2018 update was a direct result of working with suppliers of water on implementing the BPCCC Rule. The 2018 update achieved equal protection of public health and drinking water quality while reducing a burdensome requirement within the rule. In 2020,

the Commission further amended the BPCCC Rule to allow flexibility during the time of the COVID-19 pandemic while continuing to protect public health and public water systems from potential contamination associated with cross-connections.

The Division committed during each of the above rulemaking processes to continue to engage with stakeholders, solicit input, and further evaluate implementation challenges in the adopted rule.

Through this rulemaking, the Commission has further revised the BPCCC Rule to provide additional flexibility to water systems while continuing to protect public health and public water systems from potential contamination associated with cross-connections. The Division recommended that the Commission focus the improvements in several key areas as outlined below. The timing of this enhancement to the BPCCC Rule is due primarily to two factors: 1. Improving the feasibility of meeting certain deadlines to test cross-connections while still protecting public health, and 2. The rule has become 'fully mature' meaning that the ramping up of survey and assembly testing ratios has reached full maturity and a single compliance percentage is now required. The key areas of rule enhancements are as follows:

- Combining cross-connection control method and cross-connection control assembly testing ratios into a combined ratio for compliance with the rule.
- Modifying the extension request language to allow for 'common extension requests' to be automatically granted.
- Modifying the compliance determination for assemblies that were used but not tested in a given calendar year to allow an additional calendar year for the supplier to take mitigating steps. The Commission acknowledges that with this update, the concept of tracking 'active date' on a given assembly will be removed.
- Cleanup of older dates within the rule.

The Division and stakeholders agreed that combining method and assembly ratios into a single compliance ratio now that the rule is mature will simplify compliance reporting within the rule while maintaining public health protection. Also, the Division asserted and the stakeholders agreed that in the seven years of evaluating proper justification for extension requests, several 'general categories' of extensions have been identified. Given that the majority of extension requests are now viewed as relatively low risk and are nearly universally approved, the Division recommended that these categories be included within Policy 7, the Division's Backflow Policy. Only when a system wants to deviate from these 'common extensions' would they have to submit for Division approval. It should be noted that the system would still have to track all extensions and report out on them. This change makes the rule more cohesive and still protects public health.

The Division also recommended that the Commission amend the rule regarding tracking and achieving compliance for any assemblies not tested during a given calendar year. Note, suppliers of water will still have to achieve 90% method verification and assembly testing and track all assemblies. However, for any assemblies not tested during a calendar year, the supplier of water would then have to ensure all of those were tested or removed during the following calendar year, removing the burden of tracking the 'active date' and making the calculation similar. The stakeholders agreed that this change would allow for more flexibility and achievement of compliance while maintaining public health protections.

The Commission agrees with the Division that the above revisions allow public water systems that are working hard to comply with the requirements of the rule more flexibility to achieve compliance while also ensuring that public health is protected.

Additional Amendments

The Lead and Copper Rule Revisions affect several other sections of Regulation 11. The BPCCC Rule revisions affect one other section of Regulation 11. The Commission made the following amendments to be consistent with Department practices, to add clarity, or update outdated requirements:

- 11.27(4) - Addition of reference to 11.17 under sample compositing requirements for lead and copper.

- 11.33(1) and (2) - Addition of Lead and Copper Rule Revisions situations requiring a Tier 1 public notice to Tables 11.33-I and 11.33-II of the Public Notice Rule.

- 11.33(7) - Addition of Lead and Copper Rule Revisions treatment technique violations and exceedance of the lead action level to Table 11.33-V of the Public Notice Rule. Updates to the standard health effects language for lead in Table 11.33-VI of the Public Notice Rule.

- 11.34(2) (a), (b), and (e) - Consumer Confidence Report Rule updates to include notice of the availability of the service line inventory and lead tap sampling data, and changes to the health effects language for lead in Table 11.34-I.

- 11.36(4)(f) - Addition of reference to 11.17 under recordkeeping requirements for lead and copper.

- 11.36(4)(j) - Removal of outdated recordkeeping requirements for the Cross-Connection Rule. Recordkeeping for the BPCCC Rule is captured in 11.36(4)(l).

- 11.45(7) - Addition of the lead trigger level to Table 11.45-VIII.

- 11.46(9) and (12)(f)- Lead and Copper Rule analytical requirements section modified to include requirements under the Lead and Copper Rule Revisions. Addition of laboratory certification requirements for lead and copper.

- Typographical errors, renumbering, and updated cross references revised as necessary throughout Regulation 11.

PARTIES TO THE RULEMAKING

1. Aurora Water

2. City of Arvada

3. City of Westminster

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Tracking number: 2023-00227

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 08/14/2023

5 CCR 1002-11

REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS

The above-referenced rules were submitted to this office on 08/16/2023 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.

August 31, 2023 13:15:38

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-6

Rule title

8 CCR 1505-6 RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE 1 - eff 10/15/2023

Effective date

10/15/2023

COLORADO DEPARTMENT OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Rules as Adopted - Clean

August 18, 2023

(Publication instructions/notes):

Amendments to 8 CCR 1505-6 are as follows:

Amendments to Rule 1 include recodifying the definition rules in Rule 24.2, New Rules, and amendments to current rules:

Rule 1.1 is recodified from current Rule 24.2.1 with a citation amendment:

1.1 "Administrative complaint" means a complaint alleging that one or more violations of Colo. Const. Article XXVIII, Article 45 of Title 1, C.R.S., such other constitutional or statutory provisions that are incorporated or referenced therein, or the rules has occurred and that is filed by the division, or its designee, with a hearing officer pursuant to sections 1-45-111.7(5) and (7), C.R.S.

Rule 1.2 is recodified from current Rule 24.2.2:

1.2 "Agency" or "Department" means the Colorado Department of State.

[Not shown: renumbering current Rule 1.1 to Rule 1.3.]

Amendments to current Rule 1.2, renumbering to Rule 1.4 and concerning a grammatical change:

1.4 "Business activities" for purposes of Colo. Const. Article XXVIII:

1.4.1 "Business activities" means providing goods or services that result in income or any other revenue-generating activity not expressly for political purposes.

1.4.2 "Cannot engage in business activities," means that the articles of incorporation and bylaws, either expressly or implicitly, prohibit the corporation from engaging in any business activities.

[*McConnell v. Federal Elections Commission*, 540 U.S. 93 (2003)]

[Not shown: renumbering current Rule 1.3 to Rule 1.5.]

Amendments to current Rule 1.4, renumbering to Rule 1.6 and concerning a grammatical change:

1.6 "Contribution" has the same meaning as set forth in Colo. Const. Article XXVIII, Section 2(5)(a), and section 1-45-103(6), C.R.S.

1.6.1 A contribution does not include an endorsement of a candidate or an issue by any person, or include interest earned in an interest-bearing bank account, dividend income from invested committee funds, earned income from commercially reasonable transactions, or transfers of money within a political party.

1.6.2 Volunteer services

(a) Time-based services volunteered by an individual are not considered a contribution if the individual receives no direct or indirect compensation for the time volunteered.

(b) If an individual volunteers only a portion of his or her time-based services, the volunteered portion is not considered a contribution.

(c) Any unpaid services that create a thing of value are not considered a contribution. If volunteer services yield a thing of value, "contribution" only includes the reasonable value of the materials involved, unless the value is de minimis.

1.6.3 "Contribution in support of the candidacy" as outlined in Colo. Const. Article XXVIII, Section 2(2), includes all contributions given directly to, or expenditures or spending coordinated with, a candidate for a specific public office, including those to a person who maintains a candidate committee after an election cycle.

Rule 1.7 is recodified from current Rule 24.2.3 and amended:

1.7 "C.R.C.P." means Colorado Rules of Civil Procedure.

[Not shown: renumbering current Rule 1.5 to Rule 1.8.]

Rule 1.9 is recodified from current Rule 24.2.4:

1.9 "Deputy secretary" means the person appointed by the Secretary of State as the deputy secretary of state pursuant to section 24-21-105, C.R.S., with authority under section 1-45-111.7, C.R.S., or such other person as may be designated by the deputy secretary of state as the deputy secretary's designee under section 1-45-111.7(1)(b), C.R.S.

New Rule 1.10, concerning the definition of direct ballot measure expenditure throughout 8 CCR 1505-6:

1.10 "Direct ballot measure expenditure" means a direct ballot issue expenditure or a direct ballot question expenditure.

New Rule 1.11, concerning the definition of direct spending throughout 8 CCR 1505-6:

1.11 "Direct spending", as used in section 1-45-103(7.2), C.R.S., includes both a monetary and non-monetary purchase, payment, distribution, loan, advance, deposit, monetary or non-monetary gift, contract, promise, or agreement to expend funds.

Rule 1.12 is re-codified from current Rule 24.2.5 and amended:

1.12 "Division" or "elections division" has the same meaning as in section 1-45-111.7(1)(c), C.R.S., which is commonly known as the Elections Division of the Colorado Department of State.

[Not shown: renumbering current Rule 1.6 to Rule 1.13.]

New Rule 1.14, concerning the definition of funding intermediary throughout 8 CCR 1505-6:

1.14 "Funding intermediary", as used in section 1-45-103(12)(b)(II)(E), C.R.S., means acting as a pass-through for contributions earmarked for an issue committee. A person becomes an intermediary when they accept an earmarked contribution from one person and then make a contribution to an issue committee as directed.

Rule 1.15 is re-codified from current Rule 24.2.6:

1.15 "Hearing officer" has the same meaning as in section 1-45-111.7(1)(d), C.R.S., and is the person who has been retained by the agency to conduct hearings and issue initial decisions under section 1-45-111.7(6), C.R.S.

[Not shown: renumbering current Rules 1.7 through 1.8 to Rule 1.16 through 1.17.]

Rule 1.18 is re-codified from current Rule 24.2.7:

1.18 "Initial complaint" means a complaint alleging that one or more violations of Colo. Const. Article XXVIII, Article 45 of Title 1, C.R.S., such other constitutional or statutory provisions that are incorporated or referenced therein, or the rules has occurred and that is filed by any person, including the division, with the division pursuant to section 1-45-111.7(2)(a) and (7), C.R.S.

Rule 1.19 is re-codified from current Rule 24.2.8:

1.19 "Initial decision" has the same meaning as section 24-4-102, C.R.S., and includes the initial determination referenced in section 1-45-111.7(6)(b), C.R.S.

[Not shown: renumbering current Rules 1.9 through 1.13 to Rule 1.20 through 1.24.]

New Rule 1.25, concerning the definition of organization throughout 8 CCR 1505-6:

1.25 "Organization", as used in section 1-45-103(12)(b)(II), C.R.S., means a person other than a natural person or two or more natural persons that work together with a particular purpose.

[Not shown: renumbering current Rules 1.14 through 1.16 to Rule 1.26 through 1.28.]

Amendments to current Rule 1.17, renumbered to Rule 1.29, fixing a grammatical error:

1.29 "Political committee" has the same meaning as set forth in Colo. Const. Article XXVIII, Section 2(12), and does not include a married couple.

[Not shown: renumbering current Rules 1.18 through 1.21 to Rule 1.30 through 1.33.]

New Rule 1.34, concerning the definition of respondent throughout 8 CCR 1505-6:

1.34 "Respondent" means a person or entity who is the subject of a campaign and political finance complaint.

Amendments to current Rule 1.22, renumbered to Rule 1.35 concerning a grammatical change:

1.35 "Standalone candidate" means a candidate without a committee who does not accept contributions.

New Rule 1.36, concerning the definition of substantial evidence throughout 8 CCR 1505-6:

1.36 “Substantial evidence”, as used in these rules, means evidence that is probative, credible, and competent and of such weight as to be adequate for the division to accept a fact as true. This standard of proof requires a greater weight of evidence than that which is required for finding “probable cause”.

Amendments to current Rule 1.23, including renumbering to Rule 1.37:

1.37 “Support or oppose”, for the purpose of determining if a person or group of persons is a political committee as defined by Colo. Const. Article XXVIII, Section 2(12)(a), means that the person or group of persons that contributed or made an expenditure did so in coordination with the candidate or candidate committee.

[Not shown: renumbering current Rule 1.24 to Rule 1.38.]

Amendments to Rule 2:

Amendments to Rule 2.1 pertaining to a grammatical change:

2.1 Standalone candidates

[No changes to Rules 2.1.1-2.1.2.]

Amendments to Rule 2.2.4 updating the management of unexpended campaign funds, in accordance with the passage of Senate Bill 23-276. This includes amending subsections (a) and (c) and the repeal and replacement of subsection (d):

2.2.4 Managing unexpended campaign contributions

(a) A candidate committee’s ending balance on the report filed 35 days after the major election must reflect the committee’s unexpended balance and that total is reported as the beginning balance on the first report due in the next election cycle. The candidate committee’s beginning balance must reflect what amount is retained for use in a subsequent election cycle and what amount is retained for use as unexpended funds.

[No changes to subsection (b).]

(c) Candidates seeking election to a different office

(1) A candidate committee may transfer funds to a new candidate committee established by the same candidate for a different public office, subject to the political party contribution limit for the prior office sought. [Colo. Const. Article XXVIII, Section 3, and section 1-45-103.7(12)(b), C.R.S.]

(A) Funds held in excess of the party limit must be disbursed before the new election cycle in accordance with section 1-45-106(5), C.R.S., and cannot be rolled over.

(B) Funds previously designated as unexpended funds from a prior election cycle cannot be transferred to the new committee and must be disbursed as specified in section 1-45-106(1)(a) and (b), C.R.S.

(2) Contributions from persons or committees made to the prior candidate committee do not apply toward the contribution limits for the new candidate committee.

(3) A candidate committee transferring funds to a candidate committee for a different office must terminate within ten days of registering the new candidate committee.

(4) A candidate seeking election to a state, county, or local office may not transfer funds from a federal candidate committee to a Colorado candidate committee that is subject to the provisions of the Fair Campaign Practices Act.

(d) Funds rolled over, up to the political party limit of a new candidate committee, from a candidate's prior candidate committee will have the effect of offsetting how much the candidate may receive in party contributions during that election cycle by the amount of the rollover.

Amendments to Rule 2.4 concerning personal financial disclosures, including New Rule 2.4.2, pertaining to failing to file personal financial disclosures and necessary amendments and renumbering, and repealing Rule 2.4.6 due to being duplicative of statute:

2.4 Personal financial disclosures

2.4.1 Filing of personal financial disclosures

(a) A candidate need not file a new personal financial disclosure statement if the candidate filed either a full or amended disclosure statement less than 90 days before filing a candidate affidavit. [Section 1-45-110(2)(a) and (b), C.R.S.]

(b) An amended or updated disclosure statement satisfies the full disclosure statement requirement if all required amended statements have been filed since the filing of the full disclosure statement. [Sections 1-45-110 and 24-6-202, C.R.S.]

(c) If a candidate withdraws his or her candidacy by submitting appropriate documentation before filing the disclosure statement required in section 1-45-110(2)(a), C.R.S., the candidate need not file a disclosure statement. Any delinquent filing fines that the candidate accrued before withdrawing may be waived by the appropriate filing office.

(d) All personal financial disclosure filings required under sections 1-45-110 and 24-6-202, C.R.S., must be filed electronically by 11:59 p.m. MT on the date due and will be publicly available online.

(e) Incumbents seeking re-election need not file a new personal financial disclosure statement if they have already filed their annual personal financial disclosure statement. [Section 24-6-202(4)(b), C.R.S.]

New Rule 2.4.2:

2.4.2 Failure to file

(a) If a complaint is filed alleging that the personal financial disclosure was incomplete, inaccurate, or not updated, the division may consider the following

responses from the candidate or incumbent, without limitation, in determining whether the personal financial disclosure, amendment, or update meets statutory requirements:

(1) Documentation refuting the allegation of inaccuracy or incompleteness, including without limitation, for example:

(A) Federal tax returns;

(B) Banking, investment, or other financial statements;

(C) Deeds of trust or other property records;

(D) A financial manager's or auditor's certified statement of the candidate's or incumbent's financial holdings; or

(E) Other independently verifiable documentary evidence; or

(2) A signed affirmation under penalty of perjury from the candidate or incumbent attesting that the allegation of inaccuracy or incompleteness is not true and the substance of the personal financial disclosure, including amendments and annual update, is complete and accurate.

(b) If there is evidence of willful behavior outlined in section 24-6-202(7), C.R.S., such complaint may be referred to the applicable law enforcement without prejudice to the division's concurrent investigation of the matter and the pursuit of civil or administrative penalties independent of any criminal sanction.

(c) If a person subject to a complaint related to a personal financial disclosure under section 1-45-110(2), C.R.S., meets the criteria of section 1-45-110(5), C.R.S., and is defeated or withdraws from the candidacy, that person will not be required to file, supplement, or correct a personal financial disclosure after the election but may still be subject to a complaint and potential monetary penalty.

Amendments to Rule 4, including New Rule 4.3 regarding the major purpose standard and necessary renumbering:

4.3 Major purpose standard

4.3.1 For an organization supporting or opposing a non-statewide ballot measure, a major purpose of the organization as that phrase is used in Colo. Const. Article XXVIII, Section 2(10)(a), is determined based on the consideration of:

(a) The organization's specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended; or

(b) The organization's demonstrated pattern of conduct, as reflected through the following non-exclusive set of factors, including:

(1) The scope of the issues addressed in the organization's print and electronic publications;

(2) The length of time the organization had existed;

(3) The organization's original purpose;

(4) The organization's organizational structure;

(5) The various issues in which the organization had been involved; and

(6) The amount of money the organization had spent on the issue in question in relation to its annual budget.

[*Cerbo v. Protect Colo. Jobs, Inc*., 240 P.3d 495, (Colo. App. 2010)]

4.3.2 For an organization supporting or opposing a statewide ballot measure, a major purpose as outlined in section 1-45-103(12)(b), C.R.S., is determined as follows:

(a) The organization's specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended; or

(b) The organization's demonstrated pattern of conduct which is evidenced by its spending. Specifically,

(1) During the current and two preceding years, did the organization:

(A) Make contributions to a single statewide issue committee or make direct ballot measure expenditures in support of or opposition to one statewide ballot measure that, combined, exceeded 20% of the organization's total spending (in any location and for any reason) during the current and two preceding years; or

(B) Make contributions to more than one statewide issue committee or make direct ballot measure expenditures in support of more than one statewide ballot measure that combined exceeded 30% of the organization's total spending (in any location and for any reason) during the current and two preceding years; or

(2) Does the organization have a pattern of conduct as acting as a funding intermediary by making earmarked contributions to an issue committee.

4.3.3 For campaign and political finance complaints involving whether the respondent is an organization that has a major purpose of supporting or opposing one or more ballot measures, a rebuttable presumption that the organization met the standard for having a major purpose under section 1-45-103(12)(b), C.R.S., is created if:

(a) A campaign and political finance complaint has been filed and the division initially determines that the complaint alleges a potential violation in which the respondent may have a major purpose of supporting or opposing one or more ballot measures; and

(b) The respondent fails to provide substantial evidence, as defined in Rule 1.36, that they have not met the major purpose standard.

4.3.4 This presumption will be considered sufficient information to support the filing of an administrative complaint with a hearing officer under section 1-45-111.7(5), C.R.S. The presumption of meeting the major purpose standard can be rebutted by the respondent

during the administrative hearing process. The presumption of meeting the major purpose standard no longer applies once the respondent has appeared and answered an administrative complaint in a hearing before a hearing officer.

[Not shown: renumbering current Rules 4.3 through 4.5 to Rules 4.4 through 4.6.]

Amendments to Rule 5.1, including New Rules 5.1.4 through 5.1.6 and concerning the amount that an independent expenditure committee is required to report:

5.1 An independent expenditure committee must report donations over $20 given for the purpose of making an independent expenditure.

5.1.1 An independent expenditure committee must itemize donations of $250 or more per year given for the purpose of making an independent expenditure and include the name and address of the donor.

5.1.2 If the committee is unable to gather the information required by section 1-45-107.5(4)(b)(II), or (III), C.R.S., within 30 days after receipt of the donation, the committee must return the donation to the donor no later than the 31st day after receipt.

5.1.3 An independent expenditure committee must itemize independent expenditures made in an aggregate amount of $1,000 in any one calendar year and include the information required by section 1-45-107.5, C.R.S.

5.1.4 An independent expenditure committee must list all expenditures of $250 or more during a reporting period, including the name and address of payees. The committee may report any disbursement not defined as an expenditure to the appropriate officer.

5.1.5 An independent expenditure committee must list individual expenditures in amounts of less than $250 that aggregate to total of $250 or more to the same payee during the reporting period.

5.1.6 An independent expenditure committee may report all other expenditures of less than $250 during a reporting period, in total, as non-itemized expenditures.

Amendments to Rule 10.1, concerning an outdated language and inclusion of statutory references:

10.1 Unexpended campaign contributions.

[No changes to Rules 10.1.1 to 10.1.2]

10.1.3 Unexpended contributions may not be used for personal purposes except to reimburse a candidate or incumbent for reasonable and necessary expenses for the care of a child or a dependent as allowed under sections 1-45-103.7(6.5) and 1-45-106(1)(b)(VI), C.R.S.

New Rule 10.19, concerning the reporting of a direct ballot measure expenditure:

10.19 Reporting a direct ballot measure expenditure

10.19.1 The disclosure report required by section 1-45-108(1)(a)(VI), C.R.S.

(a) The aggregate of $5,000 in direct ballot measure expenditures can be met with expenditures of any amount.

(b) Once a person makes $5,000 in direct ballot measure expenditures in the aggregate within a calendar year, each additional expenditure of $1,000 or more must be reported.

(c) A single direct ballot measure expenditure of less than $1,000 does not need to be reported.

(d) Direct ballot measure expenditure disclosure reports must be filed within 48 hours of when the direct spending occurs or when a contractual agreement is made.

(e) Expenditures by an issue committee are not direct ballot measure expenditures and should be reported in accordance with Rule 10.3 and section 1-45-108(1), C.R.S.

(f) Notwithstanding any other provision of law, a foreign government, foreign corporation, or natural person who is not a United States citizen may not make a direct ballot measure expenditure, and a person making a direct ballot measure expenditure may not knowingly accept funds from a foreign government, foreign corporation, or a natural person who is not a citizen of the United States for the purpose of making a direct ballot measure expenditure.

10.19.2 Each direct ballot measure expenditure disclosure must include:

(a) The name and address of the payor;

(b) The name and address of payee;

(c) The name of the original source of the funds, if the direct ballot measure expenditure was paid with earmarked funds;

(d) The amount of the direct ballot measure expenditure;

(e) The date of the direct ballot measure expenditure;

(f) The purpose for which the direct ballot measure expenditure was made, including the ballot measure and whether the direct ballot measure expenditure was in support or opposition of the ballot measure; and

(g) An affirmation signed by an authorized representative on a form provided by the Department or appropriate officer that the filer does not meet the definition of an issue committee and only used permissible sources for the expenditure.

New Rule 10.20, regarding earmarked contributions:

10.20 Earmarked contributions

10.20.1 A contribution will be considered earmarked if it includes or is accompanied by a direction or instruction which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a candidate, committee, or ballot measure.

10.20.2 Disclosure reports of earmarked contributions must include the original source of the funds as well as conduits, funding intermediaries, or other persons involved in the transaction.

10.20.3 Recipients of earmarked contributions must disclose the original source of the contribution and the person who made the contribution.

Amendments to Rule 12.3, including New Rule 12.3.5 and concerning the termination of candidate committees as required by Senate Bill 23-276:

12.3 A committee may file a termination report terminating the committee if the following conditions are met:

12.3.1 The committee no longer intends to receive contributions or make expenditures;

12.3.2 The committee's TRACER account has a zero balance, indicating it has no cash or assets on hand and there are no outstanding debts, penalties, or obligations;

12.3.3 A committee may dispose of assets remaining in its possession before termination in the same manner as allowed for unexpended contributions;

12.3.4 The committee has no pending campaign and political finance complaints or related proceedings pending before the elections division or any court; and

12.3.5 In addition to the requirements outlined in this Rule 12.3, candidate committees must terminate within:

(a) One year after the election, if the candidate was not elected; or

(b) One year after an elected candidate leaves office.

[Sections 1-45-103.7(12)(a)(I) and (II), C.R.S.]

Amendments to Rule 19.1, concerning the removal of outdate language with the passage of Senate Bill 23-276 and a grammatical change:

19.1 All disclosure reports filed with the Secretary of State under Colo. Const. Article XXVIII and Article 45 of Title 1, C.R.S., must be filed electronically on the Secretary of State's TRACER system, except as provided in Rule 19.2. Paper reports will not be accepted.

Amendments to Rule 23.1, concerning filing initial complaints and including New Rule 23.1.3 and necessary renumbering:

23.1 Filing initial complaints

23.1.1 Campaign and political finance complaints must be filed in writing and can be submitted by hardcopy or electronically. Electronic signatures are permitted for any complaint documentation that requires a signature by complaint, respondent, or the elections division.

23.1.2 A complaint must identify both a respondent and a complainant. Anonymous complaints or complaints that fail to identify a complainant and respondent may be rejected and not reviewed by the elections division.

23.1.3 Complaints must meet the plausibility pleadings standard by presenting a plausible basis, based on concrete, non-conclusory allegations of particularized facts, to support the allegations that a potential campaign and political finance violation occurred. The plausibility of an allegation is determined while accepting as true the concrete, non-conclusory assertions of fact upon which the allegation is based.

23.1.4 Complaints that stem from a common set of operative facts as a pending complaint will be consolidated when practicable. When consolidation is not practicable and the outcome of the initial case will be determinative of the later case, a complaint will be stayed until a final agency decision issues on the initial complaint and any appeals are resolved.

23.1.5 Violations stemming from late or missing filings that have had a late filing penalty assigned or the assigned penalty has been waived under Rule 18 are not subject to additional monetary penalties under Rule 23.3 for the late filing violation.

Amendments to Rule 23.3, regarding the settlement of complaints and fine structure for violations, and including necessary renumbering and grammatical changes:

23.3 Settlement of complaints and fine structure for violations

23.3.1 After a complaint has been filed with a hearing officer the elections division may enter into a settlement agreement with the respondent.

23.3.2 In assessing a fine amount or approving a settlement, the deputy secretary of state or a hearing officer, as applicable, will consider all of the following factors:

(a) Specific fine amounts outlined in Rule 23.3.3;

(b) Any appropriate specific action in Rule 23.3.4;

(c) Whether Rule 18 late filing penalties have been issued and if a waiver was granted;

(d) Sanctions available under section 1-45-111.5, C.R.S.; and

(e) The mitigating and aggravating factors, including those listed in Rule 23.3.5, to increase or decrease the monetary fine or terms.

23.3.3 Fine amounts

[No changes to subsection (a).]

(b) Failure to file complete and accurate affidavits, disclosures, contributions, expenditures, or other finance reports

(1) Failure to file complete and accurate reports is a $100 fine per report plus 5 percent of the activity not accurately or completely reported.

(2) Failure to file an accurate candidate affidavit

(A) If the affidavit is submitted within 14 days of registration deadline, the fine is at least $50; or

(B) If the affidavit is submitted after 14 days post deadline, the fine is at least $100.

(3) Failure to file an accurate or complete initial, updated, or amended personal financial disclosure as required under section 1-45-110, C.R.S., which includes content required by section 24-6-202(2), C.R.S.

(A) If the personal financial disclosure is filed or corrected within 14 days of the applicable filing due date, the fine is at least $50;

(B) If the personal financial disclosure is filed or corrected prior to the filing of any complaint alleging an insufficient filing of a personal financial disclosure, so long as the disclosure is submitted at least 30 days prior to the first election in which the candidate is running, the fine is at least $100;

(C) If the personal financial disclosure is filed or corrected after the filing of any complaint alleging an insufficient filing of a personal financial disclosure, so long as the disclosure is submitted at least 30 days prior to the first election in which the candidate is running, the fine is at least $250;

(D) If the personal financial disclosure is filed or corrected fewer than 30 days before the election in which the candidate is running, the fine is at least $500;

(E) If the candidate or incumbent is defeated or withdraws and the personal financial disclosure was not corrected, the fine will be at least $500; or

(F) If the personal financial disclosure is corrected after the election, and the respondent was not defeated or did not withdraw, the fine is at least $1,000.

(4) Failure to file an initial disclosure report or an annual update as required under section 24-6-202, C.R.S.

(A) If the disclosure report is filed within 14 days of due date, the fine is at least $50;

(B) If the disclosure report is filed within 28 days of due date, the fine is at least $100;

(C) If the disclosure report is filed more than 28 days late but at least 30 days prior to an election in which the official is running, the fine is at least $500; or

(D) If the disclosure report is filed after an election in which the official is running, the fine is at least $1,000.

(5) Filing an inaccurate or incomplete personal financial disclosure or failure to correct an inaccurate or incomplete personal financial disclosure could result in criminal and civil penalties under section 24-6-202(7), C.R.S.

[No changes to subsections (c) and (d).]

New subsection (e) including fines for violations by the state or political subdivisions:

(e) Violations by the state or a political subdivision under section 1-45-117, C.R.S.

(1) If the violation is cured before the election but there was no substantial compliance, the fine will be at least $500;

(2) If the violation is not cured before the election, the fine will be at least $1,000; or

(3) If the amount of funds improperly used is ascertainable, the fine will be at least three times the amount of the improperly used funds.

(f) Other violations of campaign and political finance rules and regulations will be assessed penalties based on the circumstances of the violations and factors outlined in Rule 23.3.4.

Amendments to Rule 23.3.4, including a grammatical change:

23.3.4 Specific action(s)

[No changes to subsection (a).]

[Not shown: current Rule 24.2 is repealed and re-codified throughout Rule 1.1. This is shown at the beginning of the document.]

[Not shown: renumbering of current Rules 24.3 through 24.22 to Rules 24.2 through 24.21.]

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Office of the Attorney General

Tracking number: 2023-00317

Opinion of the Attorney General rendered in connection with the rules adopted by the

Secretary of State

on 08/18/2023

8 CCR 1505-6

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

The above-referenced rules were submitted to this office on 08/18/2023 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.

September 07, 2023 11:28:40

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-1

Rule title

3 CCR 713-1 MEDICAL RULES AND REGULATIONS 1 - eff 08/17/2023

Effective date

08/17/2023

Expiration date

12/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

MEDICAL RULES AND REGULATIONS

3 CCR 713-1

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

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1.15 RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY PHYSICIAN ASSISTANTS

…

C. EXTENT AND MANNER IN WHICH A PHYSICIAN ASSISTANT MAY PERFORM ACTS CONSTITUTING THE PRACTICE OF MEDICINE WITH A COLLABORATIVE AGREEMENT IN PLACE

1. The requirements for a Collaborative Agreement applies to all collaborating physicians and physician assistants as of August 7, 2023.

2. Responsibilities of the Physician Assistant

   a. Compliance with these Rules. A physician assistant is responsible for implementing and complying with statutory requirements and the provisions of these Rules.

   b. License. A physician assistant shall ensure that the individual's license to practice as a physician assistant is active and current prior to performing any acts requiring a license.

   c. Collaborative Agreement. A physician assistant must keep on file their Collaborative Agreement at their primary location of practice and make it available to the Board upon request.

   d. Identification As A Physician Assistant. While performing acts defined as the practice of medicine, a physician assistant shall clearly identify both visually (e.g. by nameplate or embroidery on a lab coat) and verbally as a physician assistant.

   e. Chart Note. A physician assistant shall make a chart note for every patient for whom the physician assistant performs any act defined as the practice of medicine in section 12-240-107(1), C.R.S. When a physician assistant consults with any physician about a patient, the physician assistant shall document in the chart note the names of any physician consulted and the date of the consultation.

   f. Documentation. A physician assistant shall keep such documentation as necessary to assist a collaborating or other physician in performing an adequate performance assessment as set forth below in Section (C)(3)(b) of this Rule.

   g. Emergency Department Settings

(1) Collaborative Agreements entered into by physician assistants in emergency departments in hospitals with Level I or II trauma center settings shall take the form of a supervisory agreement as identified in section 12-240-114.5(2)(b)(IV)(A), C.R.S.

(2) For Collaborative Agreements entered into by physician assistants in emergency departments in hospitals other than with Level I or II trauma center settings, a supervising physician or physician group may increase the number of hours for which the Collaborative Agreement is a supervisory agreement, pursuant to section 12-240-114.5(2)(b)(IV)(B), C.R.S.

3. Requirements for Physicians and Physician Groups Entering into Collaborating Agreements

a. Physicians must be actively practicing medicine in Colorado by means of a regular and reliable physical presence in Colorado. For purposes of this Rule, to practice medicine based primarily on telecommunication devices or other telehealth technologies does not constitute “actively practicing medicine in Colorado.”

b. Performance Evaluation

(1) A physician or physician group who has entered into a Collaborating Agreement with a physician assistant shall develop and carry out a periodic Performance Evaluation as required by these Rules and section 12-240-114.5(1)(c), C.R.S. The Performance Evaluation should include domains of competency relevant to the particular practice and utilize more than one modality of assessment to evaluate those domains of competency. The Performance Evaluation should take into account the education, training, experience, competency, and knowledge of the individual physician assistant for whatever practice area in which the physician assistant is engaged.

(2) The statutory relationship between the physician or physician group and physician assistant is by its nature a team relationship. The purpose of the Performance Evaluation is to enhance the collaborative nature of the team relationship, promote public safety, clarify expectations, and facilitate the professional development of an individual physician assistant.

(3) The domains of competency may be dependent upon the type of practice the physician assistant is engaged in and may include but are not limited to:

(a) Medical knowledge;

(b) Ability to perform an appropriate history and physical examination;

(c) Ability to manage, integrate and understand objective data, such as laboratory studies, radiographic studies, and consultations;

(d) Clinical judgment, decision-making and assessment of patients;

(e) Accurate and appropriate patient management;

(f) Communication skills (patient communication and communication with other care providers);

(g) Documentation and record keeping;

(h) Collaborative practice and professionalism;

(i) Procedural and technical skills appropriate to the practice.

(4) The modalities of assessment to evaluate domains of competency may include but are not limited to:

(a) Co-management of patients;

(b) Direct observation;

(c) Chart review with identification of charts reviewed;

(d) Feedback from patients and other identified providers.

(5) Performance evaluations must occur with at least the minimum frequency required in section 12-240-114.5(2)(b)(I)(C), C.R.S.

(6) A physician or physician group must maintain accurate records and documentation of the Performance Evaluations, including the initial Performance Evaluation and periodic Performance Evaluations for each physician assistant with whom they have entered into a Collaborative Agreement.

(7) The Board may audit a physician's or physician group's performance assessment records. Upon request, the physician or physician group shall produce records of the performance assessments as required by the Board.

4. Waiver of Provisions of these Rules

a. Criteria for Obtaining Waivers.

(1) Upon a showing of good cause, the Board may permit waivers of any provision of these Rules.

(2) Factors to be considered in granting such waivers include, but are not limited to: whether the physician assistant is located in an underserved or rural area; the quality of protocols setting out the responsibilities of a physician assistant in the particular practice; any disciplinary history on the part of the physician assistant or the physician entering into a Collaborating Agreement; and whether the physician assistant in question works less than a full schedule.

(3) All such waivers shall be in the sole discretion of the Board. All waivers shall be strictly limited to the terms provided by the Board. No waivers shall be granted if in conflict with state law.

b. Procedure for Obtaining Waivers.

(1) Applicants for waivers must submit a written application on forms approved by the Board detailing the basis for the waiver request.

(2) The written request should address the pertinent factors listed in Section (C)(4)(a)(2) of this Rule and include a copy of any written protocols in place for the supervision of physician assistants.

(3) Upon receipt of the waiver request and documentation, the matter will be considered at the next available Board meeting.

D. PRESCRIPTION AND DISPENSING OF DRUGS.

1. Prescribing Provisions:

a. A physician assistant may issue a prescription order for any drug or controlled substance provided that:

(1) Each prescription and refill order is entered on the patient's chart.

(2) For each written prescription issued by a physician assistant, the prescription shall contain, in legible form imprinted on the prescription, the physician assistant's name and the address of the health facility where the physician assistant is practicing.

(a) If the health facility is a multi-specialty organization, the name and address of the specialty clinic within the health facility where the physician assistant is practicing must be imprinted on the prescription.

(3) A physician assistant may not issue a prescription order for any controlled substance unless the physician assistant has received a registration from the United States Drug Enforcement Administration.

(4) For the purpose of this Rule electronic prescriptions are considered written prescription orders.

(5) The dispensing of prescription medication by a physician assistant is subject to section 12-280-120(6)(a), C.R.S.

2. Obtaining Prescription Drugs or Devices to Prescribe, Dispense, Administer or Deliver

a. No drug that a physician assistant is authorized to prescribe, dispense, administer, or deliver shall be obtained by said physician assistant from a source other than a collaborating physician, pharmacist, or pharmaceutical representative.

b. No device that a physician assistant is authorized to prescribe, dispense, administer, or deliver shall be obtained by said physician assistant from a source

other than a collaborating physician, pharmacist, or pharmaceutical representative.

E. REPORTING REQUIREMENTS

1. Collaborative Agreements.

a. A Collaborative Agreement must be in writing and maintained at the main practice location for the physician assistant.

b. The Collaborative Agreement must include the requirements set forth in section 12-240-114.5(2)(a), C.R.S.

c. The form shall be signed by the physician and the physician assistant.

d. Collaborative Agreements for physician assistants with fewer than five thousand practice hours, or for physician assistants changing practice areas with fewer than three thousand hours in the new practice area shall be a supervisory agreement and include the additional requirements set forth in section 12-240-114.5(2)(b), C.R.S.

Effective 12/30/83; Revised 05/30/85; Revised 12/30/85; Revised 8/30/92; Revised 11/30/94; Revised 12/1/95; Revised 12/14/95; Revised 3/30/96; Revised 3/30/97; Revised 9/30/97; Revised 3/30/98; Revised 9/30/98; Revised 06/30/00; Revised 12/30/01; Revised 9/30/04; Revised 2/9/06, Effective 3/31/06; Emergency Rule Revised and Effective 7/01/10; Revised 08/19/10, Effective 10/15/10; Revised 11/15/12, Effective 01/14/2013; Revised 5/22/14, Effective 7/15/14; Revised 8/20/15, Effective 10/15/15; Emergency Rule Revised And Effective 8/18/16; Permanent Rule Revised 8/18/16; Effective 10/15/16; Permanent Rule Revised 2/15/18; Emergency Rule Revised 8/17/23 and Effective 8/17/23; Permanent Rule Revised 8/17/23 and Effective 10/15/23;

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COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

COLORADO MEDICAL BOARD

JUSTIFICATION OF EMERGENCY STATUS

August 17, 2023

The basis for these rules is to carry out the provisions of the Medical Practice Act at section 12-240-101, *et seq.*, C.R.S. These emergency rules are promulgated to comply with state law.

The immediate adoption of amendments to Rule 1.15, RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY PHYSICIAN ASSISTANTS, is to implement Colorado Senate Bill 23-083 (Concerning an Expansion of a Physician Assistant's Ability to Practice, and, in Connection Therewith, Changing the Relationship between a Physician Assistant and a Physician or Podiatrist from Supervision to Collaboration).

The Board finds it is imperatively necessary to adopt the amendments on an emergency basis in order to comply with state law, SB23-083, which took effect on August 7, 2023. The Board further finds that compliance with the requirements of section 24-4-103, C.R.S. would be contrary to the public interest.

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Office of the Attorney General

Tracking number: 2023-00543

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/17/2023

3 CCR 713-1

MEDICAL RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/21/2023 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.

September 05, 2023 16:13:41

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-1

Rule title

3 CCR 713-1 MEDICAL RULES AND REGULATIONS 1 - eff 10/01/2023

Effective date

10/01/2023

Expiration date

12/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

MEDICAL RULES AND REGULATIONS

3 CCR 713-1

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

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1.32 RULES AND REGULATIONS REGARDING GENERALLY ACCEPTED STANDARDS OF MEDICAL PRACTICE REGARDING PREGNANCY-RELATED SERVICES

A. Basis: The authority for promulgation of Rule 1.32 ("these Rules") by the Colorado Medical Board ("Board") is set forth in sections 24-4-103, 12-240-106(1)(a), and 12-30-120(2), C.R.S.

B. Purpose: The purpose of these rules and regulations is to implement the requirements of section 12-30-120(2), C.R.S.

C. Definitions

1. "Abortion" has the meaning set forth in section 25-6-402(1), C.R.S.

2. "Medication abortion" has the meaning set forth in section 12-30-120(1)(b), C.R.S.

3. "Medication abortion reversal" has the meaning set forth in section 12-30-120(1)(c), C.R.S.

D. Standard of Care Considerations

1. Compliance with generally accepted standards of medical practice requires a licensee to exercise the same degree of knowledge, skill, and care as exercised by licensees in the same field of medicine at the time care is rendered. Substandard care cannot be excused on the grounds that other licensees also provided care which deviates from generally accepted medical standards. Ascertaining the objectively reasonable standard of care is more than just a factual finding of what all, most, or even a "respectable minority" of licensees do. Rather, licensees will be judged according to the tenets of the school of practice to which the licensee professes to follow.

2. The Board evaluates generally accepted standards of medical practice on a case-by-case basis. Each instance of medical care will involve its own unique set of facts that the Board must evaluate against the backdrop of evidence-based practice standards when available.

3. In evaluating whether a licensee's provision of medication abortion reversal meets generally accepted standards of medical practice, the Board will evaluate the scope and nature of information exchanged between the licensee and patient prior to services being provided. The Board anticipates that a fully informed consent will include, at a minimum, information about the risks, benefits, likelihood of intended outcome of the proposed treatment, and likelihood of achieving the intended outcome without the proposed treatment in order for the patient to make an informed decision about whether to undertake the treatment. The Board anticipates that the licensee will document the

substance of all informed consent discussions and will place a copy of all written informed consent disclosures within the patient's chart.

4. Although the Board will not treat medication abortion reversal as a *per se* act of unprofessional conduct, the Board does not consider administering, dispensing, distributing, or delivering progesterone with the intent to interfere with, reverse, or halt a medication abortion undertaken through the use of mifepristone and/or misoprostol to meet generally accepted standards of medical practice under section 12-240-121(1)(j), C.R.S. For other conduct that could meet the definition of medication abortion reversal, the Board will investigate such deviation on a case-by-case basis. Licensees are expected to practice evidence-based medicine, and any licensee who provides unscientific treatments that fall below the generally accepted standard of care may be subject to discipline.

Emergency Rule Adopted 8/17/23 and Effective 10/1/23; Permanent Rule Adopted 8/17/23 and Effective 10/15/23;

…

COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations

COLORADO MEDICAL BOARD

JUSTIFICATION OF EMERGENCY STATUS

August 17, 2023

The basis for these rules is to carry out the provisions of the Medical Practice Act at section 12-240-101, *et seq.*, C.R.S. These emergency rules are promulgated to comply with state law.

The Board finds that immediate adoption of new Rule 1.32, RULES AND REGULATIONS REGARDING GENERALLY ACCEPTED STANDARDS OF MEDICAL PRACTICE REGARDING PREGNANCY-RELATED SERVICES, is imperatively necessary to comply with state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S. would be contrary to the public interest.

The Board finds it is imperatively necessary to adopt Rule 1.32 on an emergency basis in order to comply with the legislature's directive in SB23-190 to promulgate rules no later than October 1, 2023.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
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STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2023-00547

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/17/2023

3 CCR 713-1

MEDICAL RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/21/2023 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.

September 05, 2023 16:15:41

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-3

Rule title

4 CCR 723-3 RULES REGULATING ELECTRIC UTILITIES 1 - eff 08/14/2023

Effective date

08/14/2023

Expiration date

03/11/2024

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to describe the electric service to be provided by jurisdictional utilities and master meter operators to their customers; to designate the manner of regulation over such utilities and master meter operators; and to describe the services these utilities and master meter operators shall provide. In addition, these rules identify the specific provisions applicable to public utilities or other persons over which the Commission has limited jurisdiction. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, electric service low-income program, cost allocation between regulated and unregulated operations, recovery of costs, the acquisition of renewable energy, small power producers and cogeneration facilities, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-124(2), 40-2-202, 40-2-203, 40-3-102, 40-3-102.5, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-113.5, 40-7-116.5, 40-8.7-105(5), and 40-9.5-107(5), C.R.S.

GENERAL PROVISIONS

* * * *

[indicates omission of unaffected rules]

3001. Definitions.

The following definitions apply throughout this Part 3, except where a specific rule or statute provides otherwise. In addition to the definitions here, the definitions found in the Public Utilities Law and Part 1 apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply. In the event of a conflict between these definitions and a definition in Part 1, these definitions shall apply.

(a) "Affiliate" of a utility means a subsidiary of a utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual utility's involvement with the joint venture, a subsidiary of a parent corporation of a utility or where the utility or the parent corporation has a controlling interest over an entity.

(b) “Aggregated data” means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) and/or the compilation of customer data of one or more customers from which all unique identifiers and personal information has been removed.

(c) "Applicant for service" means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.

(d) “Base rate” means charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate adjustment mechanism.

(e) "Basis point" means one-hundredth of a percentage point (100 basis points = one percent).

(f) "Benefit of service" means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.

(g) "Commission" means the Colorado Public Utilities Commission.

(h) “Contracted agent” means any person that has contracted with a utility in compliance with rule 3030 to assist in the provision of regulated utility services (e.g., an affiliate or vendor).

(i) "Customer" means any person who is currently receiving utility service. Any person who moves within a utility’s service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.

(j) “Customer data” means customer-specific data or information, excluding personal information as defined in paragraph 1004(x), that is:

(I) collected from the electric meter by the utility and stored in its data systems (e.g., kWh, kW, voltage, VARs and power factor);

(II) combined with customer-specific energy usage information on bills issued to the customer for regulated utility service when not publicly or lawfully available to the general public; or

(III) about the customer’s participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs.

(k) "Distribution facilities" are those lines designed to operate at the utility's distribution voltages in the area as defined in the utility’s tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility’s transmission system.

(l) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.

(m) “Energy storage system” means a commercially available technology that is capable of retaining energy, storing the energy for a period of time, and delivering the energy as electricity after storage by chemical, thermal, mechanical, or other means.

(n) “Financial security” includes any stock, bond, note, or other evidence of indebtedness.

(o) “Generation facility” means a power plant that converts a primary energy resource into electricity. Primary energy resources include, but are not limited to: nuclear resources, coal, natural gas, hydro, wind, solar, biomass, and geothermal.

(p) "Heavy load" means not less than 60 percent, but not more than 100 percent, of the nameplate-rated capacity of a meter.

(q) "Informal complaint" means an informal complaint as defined and discussed in the Commission’s Rules Regulating Practice and Procedure.

(r) "Light load" means approximately five to ten percent of the nameplate-rated capacity of a meter.

(s) "Load" means the power consumed by an electric utility customer over time (measured in terms of either demand or energy or both).

(t) “Local government” means any Colorado county, municipality, city and county, home rule city or town, home rule city and county, or city or town operating under a territorial charter.

(u) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to discontinue utility service. If the utility does not operate an office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or to discontinue utility service in Colorado.

(v) "Main service terminal" means the point at which the utility’s metering connections terminate.

(w) “Major event” means an event as defined in and consistent with IEEE Standard Number 1366-2003, Guide for Electric Power Distribution Reliability Indices.

(x) "MVA" means mega-volt amperes and is the vector sum of the real power and the reactive power.

(y) “Non-standard customer data” means all customer data that are not standard customer data.

(z) "Output" means the energy and power produced by a generation system.

(aa) "Past due" means the point at which a utility can affect a customer’s account for regulated service due to non-payment of charges for regulated service.

(bb) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.

(cc) “Property owner” means the legal owner of government record for a parcel of real property within the service territory of a utility. A utility may rely upon the records of a county clerk for the county within which a parcel of property is located to determine ownership of government record.

(dd) “Rate adjustment mechanism” or “rate rider” means a charge added to a utility bill to recover a specific cost that is not part of the base rate.

(ee) "Reference standard" means suitable indicating electrical equipment permanently mounted in a utility's laboratory and used for no purpose other than testing rotating standards.

(ff) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission or contained in a tariff of the utility.

(gg) “RFP” means request for proposals.

(hh) "Rotating standard" means a portable meter used for testing service meters.

(ii) "RUS" means the Rural Utilities Service of the United States Department of Agriculture, or its successor agencies.

(jj) "Service connection" is the location on the customer’s premises/facilities at which a point of delivery of power between the utility and the customer is established. For example, in the case of a typical residential customer served from overhead secondary supply, this is the location at which the utility’s electric service drop conductors are physically connected to the customer’s electric service entrance conductors.

(kk) “Standard customer data” means customer data maintained by a utility in its systems in the ordinary course of business.

(ll) “Test year” means a twelve-month period that is examined to determine a utility's costs of service in a rate case.

(mm) “Third-party” means a person who is not the customer, an agent of the customer who has been designated by the customer with the utility and is acting of the customer’s behalf, a regulated utility serving the customer, or a contracted agent, of the utility.

(nn) "Transmission facilities" are those lines and related substations designed and operating at voltage levels above the utility's voltages for distribution facilities, including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the utility’s transmission system.

(oo) “Unique identifier” means a customer’s name, mailing address, telephone number, or email address that is displayed on a bill.

(pp) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff filed with the Commission, and are for service or merchandise not required as a condition of receiving regulated utility service.

(qq) "Utility" means any public utility as defined in § 40-1-103, C.R.S., providing electric, steam, or associated services in the state of Colorado.

(rr) "Utility service" or "service" means a service offering of a utility, which service offering is regulated by the Commission.

(ss) “Whole building data” means the sum of the monthly electric use for either all meters at a building on a parcel or real property or all buildings on a parcel of real property.

3002. Applications.

(a) Any person may seek Commission action regarding any of the following matters through the filing of an appropriate application to request a(n):

(I) issuance or extension of a certificate of public convenience and necessity for a franchise, as provided in rule 3100;

(II) issuance or extension of a certificate of public convenience and necessity for service territory, as provided in rule 3101;

(III) issuance of a certificate of public convenience and necessity for construction of facilities, as provided in rule 3102;

(IV) amendment of a certificate of public convenience and necessity in order to change, extend, curtail, abandon, or discontinue any service or facility, as provided in rule 3103;

(V) transfer of a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets within the jurisdiction of the Commission or stock, or to merge a utility with another entity, as provided in rule 3104;

(VI) issuance, or assumption of any financial security or to create a lien pursuant to § 40-1-104, as provided in rule 3105;

(VII) flexible regulatory treatment to provide service without reference to tariffs, as provided in rule 3106;

(VIII) approval of an air quality improvement program, as provided for in rule 3107;

(IX) approval of a new tariff or an amendment of a tariff for a rate adjustment mechanism on less than statutory notice, as provided in rule 3109;

(X) variance of voltage standards, as provided in rule 3202;

(XI) approval of meter and equipment testing practices, as provided in rule 3303;

(XII) approval of a meter sampling program, as provided in rule 3304;

(XIII) approval of a refund plan, as provided in rule 3410;

(XIV) approval of a Low-Income Energy Assistance Plan, as provided in rule 3411;

(XV) approval of a cost assignment and allocation manual, as provided in rule 3503;

(XVI) approval of or for amendment to a least-cost resource plan, as provided in rules 3603, 3618, and 3619;

(XVII) approval of a compliance plan, as provided in rule 3657;

(XVIII) appeal of local government land use decision, as provided in rule 3703; or

(XIX) matter not specifically described in this rule, unless such matter is required to be submitted as a petition under rule 1304, as a motion, or as some other specific type of submittal.

* * * *

[indicates omission of unaffected rules]

OPERATING AUTHORITY

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[indicates omission of unaffected rules]

3108. Tariffs.

(a) A utility shall keep on file with the Commission the following documents pertaining to retail electric service: its current Colorado tariffs, forms of contracts and electric service agreements. These documents, unless filed under seal shall be available for public inspection at the Commission and at the principal place of business of the utility.

(b) All tariffs shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.

(c) Filing and contents of tariff.

(I) In addition to the requirements and contents in rule 1210, the following shall be included in a utility's tariff, as applicable:

(A) information regarding the utility’s voltages, pursuant to rule 3202;

(B) information regarding the utility’s meter testing equipment and facilities, scheduled meter testing, meter testing records, fees for meter testing upon request, and meter reading, pursuant to rules 3303, 3304, 3305, 3306, and 3309;

(C) information regarding the utility’s benefit of service transfer policies, pursuant to paragraph 3401(c);

(D) information regarding the utility's installment payment plans and other plans, pursuant to rule 3404;

(E) information regarding the utility's collection fees or miscellaneous service charges, pursuant to subparagraphs 3404(c)(VI) and (VIII);

(F) information regarding the utility's after-hour restoration fees, pursuant to paragraph 3409(b);

(G) information regarding the utility's renewable energy program pursuant to subparagraphs 3657(a)(III), (V), (VI) and (VII);

(H) information regarding the utility's avoided costs, pursuant to paragraph 3902(b); and

(I) rules, regulations, and policies covering the relations between the customer and the utility.

3109. New or Changed Tariffs.

(a) A utility shall file with the Commission any new or changed tariffs. No new or changed tariff shall be effective unless it is filed with the Commission and either is allowed to go into effect by operation of law or is approved by the Commission.

(b) A utility shall use one of the following filing processes to seek to add a new tariff other than a tariff setting forth a base rate. If the new tariff represents an increase in the utility's rates, charges, fees, fares, tolls, rentals, or classifications, the utility shall include a rate trend report with the elements in subparagraphs 3109(e)(I) through (IV).

(I) The utility may file the proposed new tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's proposed effective date, the proposed tariff shall take effect on the proposed effective date.

(II) The utility may file an application to implement a new tariff. The application shall include the information required in paragraphs 3002(b) and 3002(c); shall explain the details of the proposed tariff, including financial data if applicable; and shall note any prior Commission action, in any proceeding, pertaining to the present or proposed tariff. If the application is approved by the Commission, the utility shall file a compliance advice letter and tariff which tariff shall be the same in substance as was approved by decision. The advice letter and tariff shall be filed in a new proceeding with the prescribed notice period either in the decision or pursuant to paragraph 1207(g). In order to be eligible to make a compliance advice letter filing on less than 30 days' notice if the application is approved by the Commission, the utility shall provide notice in accordance with rule 1207 at the time of the application filing for any rate, fare, toll, rental, charge, classification, or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility.

(c) A utility shall use the following filing process to change an existing tariff for a rate adjustment mechanism. A filing to increase a rate, charge, fee, fare, toll, rental, or classification pursuant to a tariff for an existing rate adjustment mechanism also shall include a rate trend report in accordance with paragraph 3109(e).

(I) The utility may file the proposed change to the tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's proposed effective date, the proposed tariff shall take effect on the proposed effective date.

(II) The utility may file an application to implement the change to the tariff on less than 30-days' notice, accompanied by the proposed tariff, including the proposed effective date. The utility shall provide notice in accordance with rule 1207. The application shall include the information required in paragraphs 3002(b) and 3002(c); shall explain the details of the proposed tariff, including financial data if applicable; shall state the facts which are the basis for the request that the proposed tariff become effective on less than 30-days' notice; and shall note any prior Commission action, in any proceeding, pertaining to the present or proposed tariff.

(d) A utility shall use the following filing process to change a tariff setting forth a base rate. A filing to increase a base rate also shall include a rate trend report in accordance with paragraph 3109(e).

(I) The utility shall file the proposed new tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207.

(II) The Commission shall certify the advice letter filing for completeness in accordance with paragraph 3109(f).

(e) A utility filing that introduces or increases any rate, charge, fee, fare, toll, rental, or classification shall include a rate trend report. Unless not required by another rule, the rate trend report shall include:

(I) the amount of increase in the rate, charge, fee, fare, toll, rental, or classification relative to the amount in effect on the date of the utility's filing;

(II) the amount in change in annual revenues collected by the utility as a result of the utility's filing;

(III) a chart, graph, or other pictographic demonstration of each of the utility's rates, charges, fees, fares, tolls, rentals, or classifications, including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to the date of the utility filing; and

(IV) for the same rate, charge, fee, fare, toll, rental, or classification as the utility's filing over the ten years prior to the date of the utility's filing:

(A) the dates when a previous increase or decrease went into effect;

(B) the amount of the rate, charge, fee, fare, toll, rental, or classification before a previous increase or decrease went into effect;

(C) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect;

(D) the change in annual revenues collected by the utility as a result of the utility's filing; and

(E) the proceeding number for the tariff filing where the rate, charge, fee, fare, toll, rental, or classification either was allowed to go into effect by operation of law or was approved by the Commission.

(f) The Commission shall certify by written decision that a utility base rate tariff filing made in accordance with paragraph 3109(d) includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.

(I) The utility shall include in its base rate tariff filing:

(A) a cost of service study that calculates the utility's base rate revenue requirement for a twelve-month period concluding no later than six months prior to the date of the utility's base rate tariff filing;

(B) detailed explanations of all adjustments made to the auditable historical data used in all of the cost of service studies presented in the utility's filing;

(C) an executable copy of each of the cost of service studies presented in the utility's filing, with links and formulas intact;

(D) workpapers, in executable format, to which the executable copies of the cost of service study are linked; and

(E) any other information or documentation, as determined by the Commission.

(II) To prevent delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion for an order certifying the base rate tariff filing to be complete.

(III) The process for certifying a utility base rate tariff filing as complete shall be implemented as follows.

(A) The utility shall serve a copy of the utility base rate tariff filing on all parties to its previous base rate proceeding within three business days of the utility's base rate tariff filing with the Commission.

(B) Any person affected by the base rate tariff filing may submit a written protest addressing the certification of the filing. Such protest must be filed sufficiently in advance of the effective date of the base rate tariffs.

(C) The Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The Commission may suspend the proposed tariff's effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.

(D) The Commission shall provide the utility an opportunity to cure any deficiencies of its base rate tariff filing. The Commission may condition the certification of the remedied utility base rate tariff filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.

(IV The Commission shall not issue a decision approving a base rate whose base rate tariff filing has been determined to be incomplete until any deficiencies are cured.

(V) The Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.

3110. Advice Letters.

(a) All advice letter filings shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.

(b) In addition to the requirements and contents in rule 1210, the advice letter shall include the estimated amounts, if any, by which the utility's revenues will be affected, calculated on an annual basis.

(c) Customer notice of advice letter. If the utility is required by statute, Commission rule, or order to provide notice to its customers of the advice letter, such notice shall include the requirements of subparagraph 3002(d)(I) – (XII).

3111. – 3199. [Reserved].

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[indicates omission of unaffected rules]

METERS

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[indicates omission of unaffected rules]

3310. – 3349. [Reserved].

BASE RATE PROCEEDINGS

3350. Annual Reporting on Costs Prohibited from Rates.

On or before April 30th of each year, each investor-owned utility shall file with the Commission a report that demonstrates compliance with prohibitions of costs recoverable through the utility's rates in accordance with § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers. The report shall be filed concurrently with and in the same proceeding as the investor-owned utility's annual report filed in accordance with rule 3006.

3351. – 3399. [Reserved].

* * * *

[indicates omission of unaffected rules]

Decision No. C23-0538

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0408EG

IN THE MATTER OF TEMPORARY RULES AMENDING THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS IN SENATE BILL 23-291 ADDRESSING RATE TREND REPORTS AND FILING REQUIREMENTS FOR BASE RATE TARIFF FILINGS.

COMMISSION DECISION
ADOPTING TEMPORARY RULES

Mailed Date: August 14, 2023
Adopted Date: August 9, 2023

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to amend provisions in the Commission's Rules Regulating Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-4 and provisions in the Commission's Rules Regulating Gas Utilities (Gas Rules), 4 CCR 723-3. The temporary rules implement the provisions in § 40-3-102.5(1)(b), C.R.S requiring the filing of certain information with a utility's base rate tariff filing. The temporary rules also implement § 40-3-102.5(2)(a), C.R.S., requiring the filing of rate trend reports when an electric or gas utility seeks to increase a rate or charge. The temporary rules further implement the annual reporting requirement related to costs prohibited from utility rates in § 40-3-114, C.R.S. The statutory provisions requiring these temporary rules were enacted by Senate Bill (SB) 23-291 effective August 7, 2023.

2. As discussed below, the temporary rules are adopted by this Decision without compliance with the procedures prescribed in § 24-4-103, C.R.S. to provide continuity in the process by which electric and gas utilities change their rates for providing service to their Colorado customers. The annual reporting provisions in these temporary rules are likewise necessary because the statute requires the utilities to file reports on certain costs prohibited from their rates pursuant to a directive from the Commission. As indicated *supra*, we find on the record the adoption of these rules is imperatively necessary to protect the public health, welfare, and safety.

3. These temporary rules are effective for 210 days from the effective date of this Decision, August 14, 2023, or until the Commission's permanent rules implementing SB 23-291 are effective. *See* § 40-2-108(2), C.R.S. The Commission will, by separate order,

open a rulemaking to adopt permanent rules, which it expects to issue on or around November 1, 2023.

4. The temporary rules in legislative (strikeout and underline) format and in final version format are available through the Commission's website at:

5. https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0408EG.

6. Attachments A and C to this Decision are the temporary rules in legislative (strikeout and underline) format modifying the Electric Rules and the Gas Rules, respectively. Attachments B and D to this Decision are the temporary rules in final version format modifying the Electric Rules and the Gas Rules, respectively.

B. Discussion, Findings, and Conclusions

7. Consistent with the requirements enacted in SB 23-291, the temporary rules adopted through this Decision require Colorado electric and gas utilities to file certain information with a base rate tariff filing and require the submission of rate trend reports when an electric or gas utility seeks to increase a rate or charge. They also require utilities to file reports annually demonstrating that they do not use ratepayer funds to subsidize nonregulated activities or to recover certain costs prohibited from rates as set forth in statute, including a percentage of costs associated with compensation for the utility's board of directors, certain other expenses incurred by such boards, tax penalties or fines, investor-relation expenses, certain advertising and public relations expenses, certain other communication expenses, lobbying expenses, charitable expenses, certain organizational or membership dues, political contributions, entertainment and gift expenses.

8. SB 23-291 became effective on August 7, 2023, the day following the expiration of the 90-day period after final adjournment of the Colorado General Assembly. Consequently, in order to avoid disruption of the continuity in the process by which electric and gas utilities change rates for the provision of service to their customers, it is imperative the Commission adopt temporary rules at this time to comply with state law, until permanent rules can be promulgated under the requirements of § 24-4-103, C.R.S. We find on the record it is imperatively necessary to adopt these rules on a temporary basis in order to allow such utilities to continue to file for necessary changes in rates and comply with the requirements set forth in SB23-291 codified at § 40-3-102.5, C.R.S. We further find that without adoption of these temporary rules, electric and gas utilities may find it difficult to continue to operate effectively in the ordinary course of business, which would be contrary to the public interest. For these reasons, and as authorized by § 24-4-103(6)(a), C.R.S., the Commission finds immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

9. The statutory authority for adoption of these rules is set forth in §§ 40-3-102.5(1)(b) and 40-3-102.5(2)(a), C.R.S., and SB 23-291.

10. The adopted temporary rules are described below along with discussion of the statutory and policy reasons for adopting each rule.

1. Applicability

11. Section 40-3-102.5(1)(d), C.R.S., defines "utility" to mean "an investor-owned electric or gas utility." Accordingly, these temporary rules apply to the investor-owned electric and gas utilities subject to the Commission's Electric Rules or Gas Rules.

2. Definitions

12. Section 40-3-102.5(1)(d), C.R.S., introduces new defined terms that are commonly used in electric and gas proceedings before the Commission but are absent from the Electric Rules and the Gas Rules.

13. SB 23-291 defines a "base rate" to mean: "charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate rider or rate adjustment mechanism."[1]

14. The term "test year" is further defined to mean: "a twelve-month period that is examined to determine a utility's costs of service in a rate case." [2]

15. Accordingly, we add definitions for the terms "base rate" and "test year" within Rule 3001 of the Electric Rules and within Rule 4001 of the Gas Rules.

16. We also add a definition of "rate adjustment mechanism" for clarity, since the term is used in the rule provisions that relate to the filing of utility rates and charges in both the Electric Rules and the Gas Rules as modified by this Decision. The definition of rate adjustment mechanism derives from § 40-3-114(6)(i), C.R.S., also enacted by SB 23-291.

3. Certification of the Completeness of a Base Rate Tariff Filing

17. Section 40-3-102.5(1)(b), C.R.S., requires the Commission to certify that a filing from an electric or gas utility to modify its base rates is complete. The Commission must determine whether the base rate tariff filing includes sufficient information both to compare test years presented by the utility and prospective parties in the case to what is commonly called a "historic test year" and whether the filing includes sufficient information to satisfy other

[1] Section 40-3-102.5(1)(d)(I), C.R.S.
[2] Section 40-3-102.5(1)(d)(II), C.R.S.

purposes as established by the Commission. At a minimum, the filing must include a comprehensive cost and revenue requirement analysis based on actual, auditable, historic data, or, in other words, a historic test year. Such analysis also must be accompanied by workpapers and other supporting materials.

18. Section 40-3-102.5(1)(b), C.R.S., specifically identifies "an investor-owned utility's application to modify base rates." In accordance with the use of the term "application" both in Title 40 and in the Commission's rules, the statute implicitly references the Commission's practice of determining whether an application filing is "complete." The determination of completeness of an application is principally governed by § 40-6-109.5, C.R.S., and the purpose of the Commission's determination of completeness pursuant to § 40-6-109.5, C.R.S., is to establish a deadline for the Commission's decision on the application.

19. The process by which the Commission determines the completeness of an application filed by an electric or gas utility is set forth in paragraph 1303(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. For an application, the determination of completeness is not, and shall not be taken or assumed to be, a decision on the merits of the application.[3] Subparagraph 1303(c)(II) sets forth the process by which the Commission determines an application to be complete, short of a determination on the application's merits, including an opportunity for the utility to cure the application filing. Notably, "The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured."[4]

[3] 4 CCR 723-1-1303(c)(I).
[4] 4 CCR 723-1-1303(c)(II).

20. Notwithstanding the language in § 40-3-102.5(1)(b), C.R.S., the filing mechanism for an electric or gas utility seeks to modify its base rates is not an application, as generally used in Title 40 and as defined in the Commission's rules, but is instead an advice letter tariff filing.[5] Advice letter filings are distinct from application filings in terms of critical process and procedures as specified in the Commission's Rules of Practice and Procedure as well as its Electric Rules and Gas Rules. Advice letter tariff filings for rates and charges are further governed by several statutes in Title 40 and by provisions in the Commission's rules that are separate from the statutes and provisions applicable to application filings with the Commission.

21. Paragraph 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules as modified by this Decision specify the filing mechanisms required for utilities to introduce or change tariffs. Neither the Electric Rules nor the Gas Rules specifically define the term tariff; instead, the rules state that: "'Regulated charges' means charges billed by a utility to a customer if such charges are approved by the Commission or contained in a tariff of the utility."[6]

22. We find it necessary to modify paragraphs 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules to properly implement § 40-3-102.5(1)(b), C.R.S.[7] These changes are necessary to reflect the distinctions between utility filings to modify base rate tariffs from utility filings to modify non-base rate tariffs, including tariffs that implement a rate adjustment mechanism.

23. We modify paragraph 3109(b) and paragraph 4109(b) to specifically address the situations where the utility seeks to add a new tariff other than a base rate tariff. The two filing

[5] 4 CCR 723-1-1210.

[6] 4 CCR 723-3-3001(dd) and 4 CCR 723-4-4001(rr).

[7] As discussed below, the modifications to paragraph 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules are also necessary to implement the provisions in § 40-3-102.5(2), C.R.S.

mechanisms available to the utility include: (1) a tariff filing with an advice letter filed on not less than 30-days' notice in accordance with Rule 1207 of the Commission's Rules of Practice and Procedure; or (2) an application that includes a pro forma tariff that takes effect upon an advice letter compliance tariff filing in accordance with a decision of the Commission on the application. The introduction of the application process in these rules is necessary to clarify the potential role of an application relative to a utility's tariffs given the language used in § 40-3-102.5(1)(b), C.R.S. As explained below, the introduction of the application process is further necessary to fulfill the new statutory requirement for informing the public about potential increases in utility rates and the historical context for such rate increases pursuant to § 40-3-102.5(2)(a), C.R.S

24. We introduce paragraph 3109(c) to the Electric Rules and paragraph 4109(c) to the Gas Rules to address the situations where the utility seeks to change an existing rate adjustment mechanism. This paragraph includes the same filing options for rate adjustment mechanism as in the currently effective paragraphs 3109(b) in the Electric Rules and 4109(b) in the Gas Rules.

25. We further introduce paragraph 3109(d) to the Electric Rules and paragraph 4109(d) to the Gas Rules to clarify that a filing to modify a base rate tariff remains an advice letter as well as to apply the new certification process for determining the completeness of a base rate tariff filing in accordance with § 40-3-102.5(1)(b), C.R.S.

26. The process by which the Commission shall certify the completeness of an advice letter filing is set forth in paragraph 3109(f) of the modified Electric Rules and 4109(f) of the modified Gas Rules. Specifically, the Commission shall certify by written decision that a utility

base rate tariff filing made in accordance with paragraph 3909(d) includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.

27. Subparagraphs 3109(f)(I) and 4109(f)(I) list the required elements in the advice letter filing informed by the elements listed in § 40-3-102.5(1)(a)(IV), C.R.S., linking the Commission's determination of completeness of the advice letter tariff filing with respect to certain information necessary to compare test years with the information the Commission requires the utility to disclose to parties in its base rate proceedings to reduce time and costs associated with the discovery process, at least with respect to test year analyses. This paragraph is further required to set a standard by which the completeness of a base rate tariff filing will be determined by the Commission. In contrast to an application, where completeness is generally a function of whether the applicant has stated the relief requested, identified all applicable requirements of Commission rule and decision(s), and address each of those respective requirements,[8] completeness for an advice letter tariff filing requires the Commission to analyze the prospects for test year comparability in the rate proceeding and to specify what other purposes the information required from the utility will serve.

28. Subparagraphs 3109(f)(II) and 4109(f)(II) offer the utility a means to mitigate the risk of the Commission suspending the effective date of the base rate tariff and a finding by the Commission that the filing is incomplete. To prevent a delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission Staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion for an order certifying the base rate tariff filing to be complete.

[8] 4 CCR 723-1-1303(b).

29. Subparagraphs 3109(f)(III) and 4109(f)(III) set forth the process by which the Commission will certify a utility base rate tariff filing as complete.

30. First, the utility shall serve a copy of the utility base rate tariff filing on all parties to its previous base rate proceeding within three business days of the utility's base rate tariff filing with the Commission.

31. Second, any person affected by the base rate tariff filing may submit a written protest addressing the certification of the filing with respect to completeness. Such protest must be filed sufficiently in advance of the effective date of the base rate tariffs.

32. Third, the Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The filing of advice letters for utility tariffs is governed, in part, by the provisions in § 40-6-111, C.R.S. For instance, pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days by setting the matter for hearing. Subparagraphs 3109(f)(III)(c) of the modified Electric Rules and subparagraph 4109(f)(III)(c) of the modified Gas Rules thus incorporate the suspension provisions for advice letter tariff filings in § 40-6-111, C.R.S., so that the utility and the parties are afforded the time to implement procedures in order for the Commission to resolve whether a base rate tariff filing is complete pursuant to § 40-3-102.5(1)(b), C.R.S.

33. Finally, subparagraphs 3109(f)(III)(d) of the modified Electric Rules and subparagraph 4109(f)(III)(d) of the modified Gas Rules provide the utility an opportunity to remedy its base rate tariff filing so that the Commission may determine that the filing is complete. The Commission may condition the certification of the remedied utility base rate tariff

filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.

34. In accordance with § 40-3-102.5(1)(b), C.R.S., subparagraphs 3109(f)(IV) and 4109(f)(IV) state that the Commission shall not issue a decision approving a modified base rate if the base rate tariff filing has been determined to be incomplete and the filing has not been cured by the utility. Likewise, subparagraphs 3109(f)(V) and 4109(f)(V) specify that the Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.

35. Due to the modifications to Rule 3109 of the Electric Rules and Rule 4109 of the Gas Rules described above, we strike the provisions in subparagraph 3109(b)(III) and 4109(b)(III) because they are no longer necessary.

4. Rate Trend Report

36. Section 40-3-102.5(2), C.R.S., requires electric and gas utilities to provide a "rate trend report" when filing any request to increase a rate, charge, fee, fare, toll, rental, or classification. A rate trend report presents changes in the rate, charge, etc., over the previous ten years and includes: (1) the amount of increase relative to the amount in effect on the date of the utility's filing; (2) the "annual total amount" of the rate, charge, etc.; and (3) a chart, graph, or "other visualization" of each of the utility's rates, charges, etc., including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to the date of the utility filing. In addition, a rate trend report must include, for the same rate, charge, etc., over the ten years prior to the date of the utility's filing: (1) the dates when a previous increase or decrease went into effect; (2) the amount of the rate, charge, etc. before a previous

increase or decrease went into effect; (3) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect; and (4) the proceeding number for the tariff filing where the rate, charge, etc. either was allowed to go into effect by operation of law or was approved by the Commission.

37. Section 40-3-102.5(2)(b), C.R.S., emphasizes the role of the rate trend report plays in informing the public about potential increases in utility rates and about the historical context for such rate increases. The utility is required to post on its website the rate trend report data, including the chart, graph, or pictographic demonstration for the ten-year historical trend submitted as part of each filed rate trend report.

38. Paragraph 3109(e) of the modified Electric Rules and paragraph 4109(e) of the modified Gas Rules implement the provisions in § 40-3-102.5(2)(a), C.R.S. Most of the provisions in these modified rules correspond directly to the language in the statute, however some terms are modified to match the common ratemaking lexicon of the Commission, the utilities, and the parties to rate cases.

39. Notably, the temporary rules make a specific clarification in the rules to implement the provision requiring the rate trend report provide the "the annual total amount of the rate, charge, fee, fare, toll, rental, or classification." We conclude that the "annual total amount" is best represented by the annual revenues collected or expected to be collected from the rate as proposed in the utility's filing and that the historic trend is demonstrated by the collected annual revenues in the ten years prior to the filing. This interpretation of "annual total amount" aligns with the new statutory definition of a test year and the concept of a revenue requirement being calculated for a given test year

40. In accordance with § 40-3-102.5(2)(a), C.R.S., a rate trend report is required only in instances where a utility files a request to increase any rate, charge, etc. The rules that address the types of filings a utility makes to request to change a rate or tariff are therefore modified to cross-reference paragraph 3109(e) of the Electric Rules and paragraph 4109(e) of the Gas Rules.

5. Annual Rate Compliance Report

41. Section 40-3-114, C.R.S., requires the Commission to prohibit electric and gas utilities from using ratepayer funds to subsidize nonregulated activities. The new statute further prohibits utilities from recovering several types of expenses from ratepayers.

42. Although we conclude that temporary rules are not necessary to implement the provisions in §§ 40-3-114(1) through (4), C.R.S, upon the effective date of SB 23-291, § 40-3-114(5), C.R.S, states that the Commission shall require electric and gas utilities to file an annual report to ensure their compliance with the requirements in § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers as set forth in the statute.

43. Accordingly, through these temporary rules adopted by this Decision, we introduce a new Rule 3350 in the Electric Rules and Rule 4350 in the Gas Rules to cause the annual reporting to take effect pursuant to a Commission requirement upon the effective date of SB 23-291. Rule 3350 and 4350 will be the location of the rules promulgated in the permanent rulemaking to fully implement the rate-related provisions of SB 23-291.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this proceeding, through the Commission's E-Filings system, are hereby adopted as temporary rules, consistent with the discussion above.

2. The temporary rules shall be effective on the Mailed Date of this Decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 9, 2023.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

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Office of the Attorney General

Tracking number: 2023-00531

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 08/14/2023

4 CCR 723-3

RULES REGULATING ELECTRIC UTILITIES

The above-referenced rules were submitted to this office on 08/15/2023 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.

August 31, 2023 15:25:04

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-4

Rule title

4 CCR 723-4 RULES REGULATING GAS UTILITIES 1 - eff 08/14/2023

Effective date

08/14/2023

Expiration date

03/11/2024

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-4

PART 4
RULES REGULATING GAS UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to set forth the manner of regulation over jurisdictional gas utilities, the services they provide, and their actions to maintain just and reasonable rates, ensure system safety, reliability, and resiliency, protect disproportionately impacted communities, and reduce greenhouse gas emissions from the use of gas by their customers and from leaks in their facilities. These rules also set forth the manner of regulation over master meter operators. These rules address a wide variety of subject areas including, but not limited to, planning, expenditure and demand forecasting, cost and rate impacts, system safety and integrity planning, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, transportation service, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, gas service low-income programs, cost allocation between regulated and unregulated operations, recovery of gas costs, appeals regarding local government land use decisions, demand side management programs, the reduction of greenhouse gas emissions from the distribution and end-use consumption of gas, and authority of the Commission to impose civil penalties on public utilities. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-3-102, 40-3-102.5, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-3-101, 40-3.2-103, 40-3.2-106, 40-3.2-107, 40-3.2-108, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, 40-7-113.5, 40-7-116.5; and 40-8.7-105(5), C.R.S.

GENERAL PROVISIONS

* * * *

[indicates omission of unaffected rules]

4001. Definitions.

The following definitions apply throughout this Part 4, except where a specific rule or statute provides otherwise. In addition to the definitions here, the definitions found in the Public Utilities Law and Part 1 apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply. In the event of a conflict between these definitions and a definition in Part 1, these definitions shall apply.

(a) "Affiliate" of a utility means a subsidiary of a utility, a parent corporation of a utility, a joint venture organized as a separate corporation or partnership to the extent of the individual utility's

involvement with the joint venture, a subsidiary of a parent corporation of a utility or where the utility or the parent corporation has a controlling interest over an entity.

(b) “Aggregated data” means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or a compilation of customer data of one or more customers from which and personal information has been removed.

(c) "Applicant for service" means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.

(d) “Air Pollution Control Division” means the Air Pollution Control Division of the Colorado Department of Public Health and Environment established by § 25-1-102(2)(a), C.R.S.

(e) “Air Quality Control Commission” means the decision-making body within the Colorado Department of Public Health and Environment established by § 25-7-104, C.R.S., to oversee and promulgate the rules to administer Colorado’s air quality programs.

(f) “Base rate” means charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate adjustment mechanism.

(g) "Basis Point" means one-hundredth of a percentage point (100 basis points = 1 percent).

(h) "Benefit of service" means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.

(i) “Best value employment metrics” means additional labor metrics required to be obtained by a utility from bidders and contractors for a utility construction contract, specifically, the length and type of training and apprenticeship programs available to the workforce, the percentage of labor estimated to be Colorado residents as compared to out of-state workers, the number and type of long-term careers supported by the project, whether the workforce will be covered by a labor agreement, and the wage rates and health care and pension benefits, including employer pension contribution rates, provided to protect labor.

(j) “Biomethane” means:

(I) a mixture of carbon dioxide and hydrocarbons released from the biological decomposition of organic materials that is primarily methane and provides a net reduction in greenhouse gas emissions; and

(II) includes biomethane recovered from manure management systems or anaerobic digesters that has been processed to meet pipeline quality gas standards.

(k) "Commission" means the Colorado Public Utilities Commission.

(l) “Contracted agent” means any person that has contracted with a utility in compliance with rule 4030 to assist in the provision of regulated utility services (e.g., an affiliate or vendor).

(m) "Cubic foot" means, as the context requires.

(I) At Local Pressure Conditions. For the purpose of measuring gas to a customer at local pressure conditions, a cubic foot is that amount of gas which occupies a volume of one cubic foot under the conditions existing in the customer's meter as and where installed. When gas is metered at a pressure in excess of eight inches of water column gauge pressure, a suitable correction factor shall be applied to provide for measurement of gas as if delivered and metered at a pressure of six inches of water column gauge pressure. A utility may also apply appropriate factors to correct local pressure measurement to standard conditions.

(II) At Standard Conditions. For all other purposes, including testing gas, a standard cubic foot is that amount of gas at standard conditions which occupies a volume of one cubic foot.

(n) "Curtailment" means the inability of a transportation customer or a sales customer to receive gas due to a shortage of gas supply.

(o) "Customer" means any person who is currently receiving utility service. Any person who moves within a utility's service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.

(p) "Customer data" means customer specific information, excluding personal information as defined in paragraph 1004(x), that is:

(I) collected from the gas meter by the utility and stored in its data systems;

(II) combined with customer-specific energy usage information on bills issued to the customer for regulated utility service when not publicly or lawfully available to the general public; or

(III) about the customer's participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs.

(q) "Dekatherm" (Dth) means a measurement of gas commodity heat content. One Dekatherm is the energy equivalent of 1,000,000 British Thermal Units (1 MMBtu).

(r) "Dedicated recovered methane pipeline" means a conveyance of recovered methane that is not a part of a common carrier pipeline system, and which conveys recovered methane from where it is generated to a common carrier pipeline or to the end user in Colorado for which the recovered methane was produced so long as the recovered methane replaces geologic gas supplied by a gas distribution utility or small gas distribution utility.

(s) "Design peak demand" refers to the maximum gas flow rate projected for a utility system, or a portion thereof, which is utilized by a utility for gas infrastructure capacity planning.

(t) "Disproportionately impacted community" means a geographic area defined pursuant to § 40-2-108(3)(d), C.R.S., and as may be further modified by Commission rule or order. Mapping of such

geographic areas shall be conducted in accordance with the best available mapping tool developed by the Colorado Department of Public Health and Environment, until such time as a different practice is adopted by Commission rule or order.

(u) "Distribution system" means the utility-owned piping and associated facilities used to deliver gas to customers, excluding facilities owned by a utility that are classified on the books and records of the utility as production, storage, or transmission facilities.

(v) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.

(w) "Gas" means natural or geological gas; hydrogen, or recovered methane, or any mixture thereof transported by a common carrier or dedicated pipeline; flammable gas; manufactured gas; petroleum or other hydrocarbon gases including propane; or any mixture of gases injected into a pipeline and transmitted, distributed, or furnished by any utility.

(x) “Income-qualified utility customer” or “low-income customer” is a customer meeting the requirements of § 40-3-106(1)(d)(II), C.R.S.

(y) "Informal complaint" means an informal complaint as defined and discussed in the Commission’s Rules Regulating Practice and Procedure, 4 CCR 723-1.

(z) "Interruption" means a utility’s inability to provide transportation to a transportation customer, or its inability to serve a sales customer, due to constraints on the utility’s pipeline system.

(aa) "Intrastate transmission pipeline" or "ITP" means generally any person that provides gas transportation service for compensation to or for another person in the State of Colorado using transmission facilities rather than distribution facilities and is exempt from FERC jurisdiction.

(bb) "Local distribution company" (LDC) means any person, other than an interstate pipeline or an intrastate transmission pipeline, engaged in the sale and distribution of gas for end-user consumption. A LDC may also perform transportation services for its end-use customers, for another LDC or its end-use customers, as authorized under its effective Colorado jurisdictional tariffs.

(cc) “Local government” means any Colorado county, municipality, city and county, home rule city or town, home rule city and county, or city or town operating under a territorial charter.

(dd) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to discontinue utility service. If the utility does not operate an office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or to discontinue utility service in Colorado.

(ee) “Mandatory relocation” means a project to relocate the utility’s gas infrastructure as required by a federal, tribal, state, county, or local governmental body.

(ff) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service lateral.

(gg) "Mcf" means 1,000 standard cubic feet.

(hh) "MMBtu" means 1,000,000 British Thermal Units, or one Dekatherm.

(ii) “Natural gas” or “geological gas” means methane or other hydrocarbons that occur underground without human intervention and may be used as fuel.

(jj) “Non-pipeline alternative” means programs, equipment, or actions that avoid, reduce, or delay the need for investment in certain types of new gas infrastructure and may include energy efficiency, demand response, and beneficial electrification.

(kk) “Non-standard customer data” means all customer data that are not standard customer data.

(ll) "Past due" means the point at which a utility can affect a customer’s account for regulated service due to non-payment of charges for regulated service.

(mm) "Pipeline system" means the utility-owned piping and associated facilities used in the transmission or distribution of gas.

(nn) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.

(oo) “Pressure district” means a localized area within a utility’s service territory whereby an established minimum and maximum pressure range is intended to be maintained and is distinct from neighboring regions.

(pp) “Property owner” means the legal owner of government record for a parcel of real property within the service territory of a utility. A utility may rely upon the records of a county clerk for the county within which a parcel of real property is located to determine ownership of government record.

(qq) “Pyrolysis” means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

(rr) “Rate adjustment mechanism” or “rate rider” means a charge added to a utility bill to recover a specific cost that is not part of the base rate.

(ss) “Recovered methane” means any of the following that are located in the State of Colorado and meet the recovered methane protocol approved by the Air Quality Control Commission: biomethane; methane derived from municipal solid waste, the pyrolysis of municipal solid waste, biomass pyrolysis or enzymatic biomass, or wastewater treatment; coal mine methane as defined in § 40-2-124(1)(a)(II), C.R.S, the capture of which is not otherwise required by law; or methane that would have leaked without repairs of the gas distribution or service pipelines from the city gate to customer end use.

(tt) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission, presented on a tariff sheet, or contained in a tariff of the utility.

(uu) "Sales customer" or “full service customer” means a customer who receives sales service from a utility and is not served under a utility’s gas transportation service at that same meter.

(vv) "Sales service" means a bundled gas utility service in which the utility both purchases gas commodity for resale to the customer and delivers the gas to the customer.

(ww) "Security" includes any stock, bond, note, or other evidence of indebtedness.

(xx) "Service lateral" means that part of a distribution system from the utility’s main to the entrance to a customer’s physical location.

(yy) "Standard conditions" means gas at a temperature of 60 degrees Fahrenheit and subject to an absolute pressure equal to 14.73 pounds per square inch absolute.

(zz) “Standard customer data” means customer data maintained by a utility in its systems in the ordinary course of business.

(aaa) "Standby capacity" means the maximum daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer, if the customer purchased optional standby service.

(bbb) "Standby supply" means the daily volumetric amount of gas reserved by a utility for the use by a transportation customer should that customer's supply fail, if the customer purchased optional standby service.

(ccc) “Test year” means a twelve-month period that is examined to determine a utility's costs of service in a rate case.

(ddd) “Third party” means a person who is not the customer, an agent of the customer who has been designated by the customer with the utility and is acting on the customer’s behalf, a regulated utility serving the customer, or a contracted agent of the utility.

(eee) "Transportation" means the exchange, forward-haul, backhaul, flow reversal, or displacement of gas between a utility and a transportation customer through a pipeline system.

(fff) "Transportation customer" means a person who, by signing a gas transportation agreement, elects to subscribe to gas transportation service offered by a utility.

(ggg) “Unique identifier” means customer’s name, mailing address, telephone number, or email address that is displayed on a bill.

(hhh) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff, and are for service or merchandise not required as a condition of receiving regulated utility service.

(iii) "Utility" means a public utility as defined in § 40-1-103, C.R.S., providing sales service or transportation service (or both) in Colorado. This term includes both an ITP and a LDC.

(jjj) "Utility service" or "service" means a service offering of a utility, which service offering is regulated by the Commission.

(kkk) “Whole building data” means the sum of the monthly gas use for either all service connections at a building on a parcel of real property or all buildings on a parcel of real property.

4002. Applications.

(a) Any person may seek Commission action regarding any of the following matters through the filing of an appropriate application to request a(n):

(I) issuance or extension of a certificate of public convenience and necessity for a franchise, as provided in rule 4100;

(II) issuance or extension of a certificate of public convenience and necessity for service territory, as provided in rule 4101;

(III) issuance of a certificate of public convenience and necessity for construction of facilities, as provided in rule 4102;

(IV) amendment of a certificate of public convenience and necessity to change, extend, curtail, abandon, or discontinue any service or facility, as provided in rule 4103;

(V) transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets within the jurisdiction of the Commission or stock, or to merge a utility with another entity, as provided in rule 4104;

(VI) approval of the issuance or assumption of any security, or to create a lien pursuant to § 40-1-104, C.R.S., as provided in rule 4105;

(VII) flexible regulatory treatment to provide service without reference to tariffs, as provided in rule 4106;

(VIII) approval of a new tariff or an amendment of a tariff for a rate adjustment mechanism on less than statutory notice, as provided in rule 4109;

(IX) approval of a meter sampling program, as provided in rule 4304;

(X) approval of a refund plan, as provided in rule 4410;

(XI) approval of a Low-Income Energy Assistance Plan, as provided in rule 4411;

(XII) approval of a cost assignment and allocation manual, as provided in rule 4503;

(XIII) approval of a gas infrastructure plan, as provided in rule 4552;

(XIV) approval of a clean heat plan, as provided in rule 4729 or 4734;

(XV) approval of a gas demand side management plan, as provided in paragraph 4752(e) and rule 4753, or for determinations on demand side management strategic issues, as provided in rule 4761;

(XVI) appeal of a local government land use decision, as provided in rule 4703; or

(XVII) any other matter not specifically described in this rule, unless such matter is required to be submitted as a petition under rule 1304, as a motion, or as some other specific type of submittal.

* * * *

[indicates omission of unaffected rules]

OPERATING AUTHORITY

* * * *

[indicates omission of unaffected rules]

4108. Tariffs.

(a) A utility shall keep on file with the Commission the following documents pertaining to gas sales service and gas transportation service: its current Colorado tariffs, forms of contracts (including gas sales agreements), and those gas transportation service agreements which are not the same as the standard gas transportation service agreement contained in the utility's tariffs. These documents, unless filed under seal, shall be available for public inspection at the Commission and at the principal place of business of the utility.

(b) All tariffs shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.

(c) Filing and contents of tariff.

(I) In addition to the requirements and contents in rule 1210, the following shall be included in a utility's tariff as applicable:

(A) a description of the minimum heating value for gas service as required by paragraph 4202(a);

(B) a description of testing methods for gas quality as required by paragraph 4202(f);

(C) interruption and curtailment criteria, policies, and implementation priorities, as required by rule 4203;

(D) transportation service rates, terms, and conditions, as required by rule 4205;

(E) the utility’s transportation service request form as required by paragraph 4206(a);

(F) information regarding the utility's meter testing equipment and facilities, scheduled meter testing, meter testing records, fees for meter testing upon request, and meter reading, as required by rules 4303, 4304, 4305, 4306, and 4309;

(G) information regarding benefit of service transfer policies as required by paragraph 4401(c);

(H) information regarding installment payment plans and other plans, as required by rule 4404;

(I) information regarding collection fees or miscellaneous service charges, as required by subparagraph 4404(c)(VI) and (c)(VIII).

(J) information regarding any after-hour restoration fees, as required by paragraph 4409(b); and

(K) all other rules, regulations, and policies covering the relations between the customer and the utility.

4109. New or Changed Tariffs.

(a) A utility shall file with the Commission any new or changed tariffs. No new or changed tariff shall be effective unless it is filed with the Commission and either is allowed to go into effect by operation of law or is approved by the Commission.

(b) A utility shall use one of the following filing processes to seek to add a new tariff other than a tariff setting forth a base rate. If the new tariff represents an increase in the utility's rates, charges, fees, fares, tolls, rentals, or classifications, the utility shall include a rate trend report with the elements in subparagraphs 4109(e)(I) through (IV).

(I) The utility may file the proposed new tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1206. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's proposed effective date, the proposed tariff shall take effect on the proposed effective date.

(II) The utility may file an application to implement a new tariff. The application shall include the information required in paragraphs 4002(b) and 4002(c); shall explain the details of the proposed tariff, including financial data if applicable; and shall identify any prior Commission action, in any proceeding, pertaining to the present or proposed tariff. If the application is approved by the Commission, the utility shall file a compliance advice letter and tariff which tariff shall be the same in substance as was approved by decision. The advice letter and tariff shall be filed in a new proceeding with the prescribed notice period either in the decision or pursuant to paragraph 1207(g). In order to be eligible to make a compliance advice letter filing on less than 30 days' notice if the application is approved by the Commission, the utility shall provide notice in accordance with rule 1207 at the time of the application filing for any rate, fare, toll, rental, charge, classification, or in any

rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility.

(c) A utility shall use the following filing process to change an existing tariff for a rate adjustment mechanism. A filing to increase a rate, charge, fee, fare, toll, rental, or classification pursuant to a tariff for an existing rate adjustment mechanism also shall include a rate trend report in accordance with paragraph 4109(e).

(I) The utility may file the proposed change to the tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's proposed effective date, the proposed tariff shall take effect on the proposed effective date.

(II) The utility may file an application to implement the change to the tariff on less than 30-days' notice, accompanied by the proposed tariff, including the proposed effective date. The utility shall provide notice in accordance with rule 1207. The application shall include the information required in paragraphs 3002(b) and 3002(c); shall explain the details of the proposed tariff, including financial data if applicable; shall state the facts which are the basis for the request that the proposed tariff become effective on less than 30-days' notice; and shall note any prior Commission action, in any proceeding, pertaining to the present or proposed tariff.

(d) A utility shall use the following filing process to change a tariff setting forth a base rate. A filing to increase a base rate also shall include a rate trend report in accordance with paragraph 4109(e).

(I) The utility shall file the proposed new tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207.

(II) The Commission shall certify the advice letter filing for completeness in accordance with paragraph 4109(f).

(e) A utility filing that introduces or increases any rate, charge, fee, fare, toll, rental, or classification shall include a rate trend report. Unless not required by another rule, the rate trend report shall include:

(I) the amount of increase in the rate, charge, fee, fare, toll, rental, or classification relative to the amount in effect on the date of the utility's filing;

(II) the amount in change in annual revenues collected by the utility as a result of the utility's filing;

(III) a chart, graph, or other pictographic demonstration of each of the utility's rates, charges, fees, fares, tolls, rentals, or classifications, including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to the date of the utility filing; and

(IV) for the same rate, charge, fee, fare, toll, rental, or classification as the utility's filing over the ten years prior to the date of the utility's filing:

(A) the dates when a previous increase or decrease went into effect;

(B) the amount of the rate, charge, fee, fare, toll, rental, or classification before a previous increase or decrease went into effect;

(C) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect;

(D) the change in annual revenues collected by the utility as a result of the utility's filing; and

(E) the proceeding number for the tariff filing where the rate, charge, fee, fare, toll, rental, or classification either was allowed to go into effect by operation of law or was approved by the Commission.

(f) The Commission shall certify by written decision that a utility base rate tariff filing made in accordance with paragraph 4109(d) includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.

(I) The utility shall include in its base rate tariff filing:

(A) a cost of service study that calculates the utility's base rate revenue requirement for a twelve-month period concluding no later than six months prior to the date of the utility's base rate tariff filing;

(B) detailed explanations of all adjustments made to the auditable historical data used in all of the cost of service studies presented in the utility's filing;

(C) an executable copy of each of the cost of service studies presented in the utility's filing, with links and formulas intact;

(D) workpapers, in executable format, to which the executable copies of the cost of service study are linked; and

(E) any other information or documentation, as determined by the Commission.

(II) To prevent delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion for an order certifying the base rate tariff filing to be complete.

(III) The process for certifying a utility base rate tariff filing as complete shall be implemented as follows.

(A) The utility shall serve a copy of the utility base rate tariff filing on all parties to its previous base rate proceeding within three business days of the utility's base rate tariff filing with the Commission.

(B) Any person affected by the base rate tariff filing may submit a written protest addressing the certification of the filing. Such protest must be filed sufficiently in advance of the effective date of the base rate tariffs.

(C) The Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The Commission may suspend the proposed tariff's effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.

(D) The Commission shall provide the utility an opportunity to cure any deficiencies of its base rate tariff filing. The Commission may condition the certification of the remedied utility base rate tariff filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.

(IV) The Commission shall not issue a decision approving a base rate whose base rate tariff filing has been determined to be incomplete until any deficiencies are cured.

(V) The Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.

4110. Advice Letters.

(a) All advice letter filings shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.

(b) In addition to the requirements and contents in rule 1210, the advice letter shall include the estimated amounts, if any, by which the utility's revenues will be affected, calculated on an annual basis.

(c) Customer notice of advice letter. If the utility is required by statute, Commission rule or order to provide notice to its customers of the advice letter, such notice shall include the requirements of subparagraphs 4002(d)(I) – (XII).

4111. – 4199. [Reserved]

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[indicates omission of unaffected rules]

METERS

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[indicates omission of unaffected rules]

4310. – 4349. [Reserved]

BASE RATE PROCEEDINGS

4350. Annual Reporting on Costs Prohibited from Rates.

(a) On or before April 30th of each year, each utility shall file with the Commission a report that demonstrates compliance with prohibitions of costs recoverable through the utility's rates in accordance with § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers. The report shall be filed concurrently with and in the same proceeding as the investor-owned utility's annual report filed in accordance with rule 4006.

4351. – 4399. [Reserved].

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[indicates omission of unaffected rules]

Decision No. C23-0538

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0408EG

IN THE MATTER OF TEMPORARY RULES AMENDING THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS IN SENATE BILL 23-291 ADDRESSING RATE TREND REPORTS AND FILING REQUIREMENTS FOR BASE RATE TARIFF FILINGS.

COMMISSION DECISION
ADOPTING TEMPORARY RULES

Mailed Date: August 14, 2023
Adopted Date: August 9, 2023

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to amend provisions in the Commission's Rules Regulating Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-4 and provisions in the Commission's Rules Regulating Gas Utilities (Gas Rules), 4 CCR 723-3. The temporary rules implement the provisions in § 40-3-102.5(1)(b), C.R.S requiring the filing of certain information with a utility's base rate tariff filing. The temporary rules also implement § 40-3-102.5(2)(a), C.R.S., requiring the filing of rate trend reports when an electric or gas utility seeks to increase a rate or charge. The temporary rules further implement the annual reporting requirement related to costs prohibited from utility rates in § 40-3-114, C.R.S. The statutory provisions requiring these temporary rules were enacted by Senate Bill (SB) 23-291 effective August 7, 2023.

2. As discussed below, the temporary rules are adopted by this Decision without compliance with the procedures prescribed in § 24-4-103, C.R.S. to provide continuity in the process by which electric and gas utilities change their rates for providing service to their Colorado customers. The annual reporting provisions in these temporary rules are likewise necessary because the statute requires the utilities to file reports on certain costs prohibited from their rates pursuant to a directive from the Commission. As indicated *supra*, we find on the record the adoption of these rules is imperatively necessary to protect the public health, welfare, and safety.

3. These temporary rules are effective for 210 days from the effective date of this Decision, August 14, 2023, or until the Commission's permanent rules implementing SB 23-291 are effective. *See* § 40-2-108(2), C.R.S. The Commission will, by separate order,

open a rulemaking to adopt permanent rules, which it expects to issue on or around November 1, 2023.

4. The temporary rules in legislative (strikeout and underline) format and in final version format are available through the Commission's website at:

5. https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0408EG.

6. Attachments A and C to this Decision are the temporary rules in legislative (strikeout and underline) format modifying the Electric Rules and the Gas Rules, respectively. Attachments B and D to this Decision are the temporary rules in final version format modifying the Electric Rules and the Gas Rules, respectively.

B. Discussion, Findings, and Conclusions

7. Consistent with the requirements enacted in SB 23-291, the temporary rules adopted through this Decision require Colorado electric and gas utilities to file certain information with a base rate tariff filing and require the submission of rate trend reports when an electric or gas utility seeks to increase a rate or charge. They also require utilities to file reports annually demonstrating that they do not use ratepayer funds to subsidize nonregulated activities or to recover certain costs prohibited from rates as set forth in statute, including a percentage of costs associated with compensation for the utility's board of directors, certain other expenses incurred by such boards, tax penalties or fines, investor-relation expenses, certain advertising and public relations expenses, certain other communication expenses, lobbying expenses, charitable expenses, certain organizational or membership dues, political contributions, entertainment and gift expenses.

8. SB 23-291 became effective on August 7, 2023, the day following the expiration of the 90-day period after final adjournment of the Colorado General Assembly. Consequently, in order to avoid disruption of the continuity in the process by which electric and gas utilities change rates for the provision of service to their customers, it is imperative the Commission adopt temporary rules at this time to comply with state law, until permanent rules can be promulgated under the requirements of § 24-4-103, C.R.S. We find on the record it is imperatively necessary to adopt these rules on a temporary basis in order to allow such utilities to continue to file for necessary changes in rates and comply with the requirements set forth in SB23-291 codified at § 40-3-102.5, C.R.S. We further find that without adoption of these temporary rules, electric and gas utilities may find it difficult to continue to operate effectively in the ordinary course of business, which would be contrary to the public interest. For these reasons, and as authorized by § 24-4-103(6)(a), C.R.S., the Commission finds immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

9. The statutory authority for adoption of these rules is set forth in §§ 40-3-102.5(1)(b) and 40-3-102.5(2)(a), C.R.S., and SB 23-291.

10. The adopted temporary rules are described below along with discussion of the statutory and policy reasons for adopting each rule.

1. Applicability

11. Section 40-3-102.5(1)(d), C.R.S., defines "utility" to mean "an investor-owned electric or gas utility." Accordingly, these temporary rules apply to the investor-owned electric and gas utilities subject to the Commission's Electric Rules or Gas Rules.

2. Definitions

12. Section 40-3-102.5(1)(d), C.R.S., introduces new defined terms that are commonly used in electric and gas proceedings before the Commission but are absent from the Electric Rules and the Gas Rules.

13. SB 23-291 defines a "base rate" to mean: "charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate rider or rate adjustment mechanism."[1]

14. The term "test year" is further defined to mean: "a twelve-month period that is examined to determine a utility's costs of service in a rate case." [2]

15. Accordingly, we add definitions for the terms "base rate" and "test year" within Rule 3001 of the Electric Rules and within Rule 4001 of the Gas Rules.

16. We also add a definition of "rate adjustment mechanism" for clarity, since the term is used in the rule provisions that relate to the filing of utility rates and charges in both the Electric Rules and the Gas Rules as modified by this Decision. The definition of rate adjustment mechanism derives from § 40-3-114(6)(i), C.R.S., also enacted by SB 23-291.

3. Certification of the Completeness of a Base Rate Tariff Filing

17. Section 40-3-102.5(1)(b), C.R.S., requires the Commission to certify that a filing from an electric or gas utility to modify its base rates is complete. The Commission must determine whether the base rate tariff filing includes sufficient information both to compare test years presented by the utility and prospective parties in the case to what is commonly called a "historic test year" and whether the filing includes sufficient information to satisfy other

[1] Section 40-3-102.5(1)(d)(I), C.R.S.
[2] Section 40-3-102.5(1)(d)(II), C.R.S.

purposes as established by the Commission. At a minimum, the filing must include a comprehensive cost and revenue requirement analysis based on actual, auditable, historic data, or, in other words, a historic test year. Such analysis also must be accompanied by workpapers and other supporting materials.

18. Section 40-3-102.5(1)(b), C.R.S., specifically identifies "an investor-owned utility's application to modify base rates." In accordance with the use of the term "application" both in Title 40 and in the Commission's rules, the statute implicitly references the Commission's practice of determining whether an application filing is "complete." The determination of completeness of an application is principally governed by § 40-6-109.5, C.R.S., and the purpose of the Commission's determination of completeness pursuant to § 40-6-109.5, C.R.S., is to establish a deadline for the Commission's decision on the application.

19. The process by which the Commission determines the completeness of an application filed by an electric or gas utility is set forth in paragraph 1303(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. For an application, the determination of completeness is not, and shall not be taken or assumed to be, a decision on the merits of the application.[3] Subparagraph 1303(c)(II) sets forth the process by which the Commission determines an application to be complete, short of a determination on the application's merits, including an opportunity for the utility to cure the application filing. Notably, "The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured."[4]

[3] 4 CCR 723-1-1303(c)(I).
[4] 4 CCR 723-1-1303(c)(II).

20. Notwithstanding the language in § 40-3-102.5(1)(b), C.R.S., the filing mechanism for an electric or gas utility seeks to modify its base rates is not an application, as generally used in Title 40 and as defined in the Commission's rules, but is instead an advice letter tariff filing.[5] Advice letter filings are distinct from application filings in terms of critical process and procedures as specified in the Commission's Rules of Practice and Procedure as well as its Electric Rules and Gas Rules. Advice letter tariff filings for rates and charges are further governed by several statutes in Title 40 and by provisions in the Commission's rules that are separate from the statutes and provisions applicable to application filings with the Commission.

21. Paragraph 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules as modified by this Decision specify the filing mechanisms required for utilities to introduce or change tariffs. Neither the Electric Rules nor the Gas Rules specifically define the term tariff; instead, the rules state that: "'Regulated charges' means charges billed by a utility to a customer if such charges are approved by the Commission or contained in a tariff of the utility."[6]

22. We find it necessary to modify paragraphs 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules to properly implement § 40-3-102.5(1)(b), C.R.S.[7] These changes are necessary to reflect the distinctions between utility filings to modify base rate tariffs from utility filings to modify non-base rate tariffs, including tariffs that implement a rate adjustment mechanism.

23. We modify paragraph 3109(b) and paragraph 4109(b) to specifically address the situations where the utility seeks to add a new tariff other than a base rate tariff. The two filing

[5] 4 CCR 723-1-1210.

[6] 4 CCR 723-3-3001(dd) and 4 CCR 723-4-4001(rr).

[7] As discussed below, the modifications to paragraph 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules are also necessary to implement the provisions in § 40-3-102.5(2), C.R.S.

mechanisms available to the utility include: (1) a tariff filing with an advice letter filed on not less than 30-days' notice in accordance with Rule 1207 of the Commission's Rules of Practice and Procedure; or (2) an application that includes a pro forma tariff that takes effect upon an advice letter compliance tariff filing in accordance with a decision of the Commission on the application. The introduction of the application process in these rules is necessary to clarify the potential role of an application relative to a utility's tariffs given the language used in § 40-3-102.5(1)(b), C.R.S. As explained below, the introduction of the application process is further necessary to fulfill the new statutory requirement for informing the public about potential increases in utility rates and the historical context for such rate increases pursuant to § 40-3-102.5(2)(a), C.R.S

24. We introduce paragraph 3109(c) to the Electric Rules and paragraph 4109(c) to the Gas Rules to address the situations where the utility seeks to change an existing rate adjustment mechanism. This paragraph includes the same filing options for rate adjustment mechanism as in the currently effective paragraphs 3109(b) in the Electric Rules and 4109(b) in the Gas Rules.

25. We further introduce paragraph 3109(d) to the Electric Rules and paragraph 4109(d) to the Gas Rules to clarify that a filing to modify a base rate tariff remains an advice letter as well as to apply the new certification process for determining the completeness of a base rate tariff filing in accordance with § 40-3-102.5(1)(b), C.R.S.

26. The process by which the Commission shall certify the completeness of an advice letter filing is set forth in paragraph 3109(f) of the modified Electric Rules and 4109(f) of the modified Gas Rules. Specifically, the Commission shall certify by written decision that a utility

base rate tariff filing made in accordance with paragraph 3909(d) includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.

27. Subparagraphs 3109(f)(I) and 4109(f)(I) list the required elements in the advice letter filing informed by the elements listed in § 40-3-102.5(1)(a)(IV), C.R.S., linking the Commission's determination of completeness of the advice letter tariff filing with respect to certain information necessary to compare test years with the information the Commission requires the utility to disclose to parties in its base rate proceedings to reduce time and costs associated with the discovery process, at least with respect to test year analyses. This paragraph is further required to set a standard by which the completeness of a base rate tariff filing will be determined by the Commission. In contrast to an application, where completeness is generally a function of whether the applicant has stated the relief requested, identified all applicable requirements of Commission rule and decision(s), and address each of those respective requirements,[8] completeness for an advice letter tariff filing requires the Commission to analyze the prospects for test year comparability in the rate proceeding and to specify what other purposes the information required from the utility will serve.

28. Subparagraphs 3109(f)(II) and 4109(f)(II) offer the utility a means to mitigate the risk of the Commission suspending the effective date of the base rate tariff and a finding by the Commission that the filing is incomplete. To prevent a delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission Staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion for an order certifying the base rate tariff filing to be complete.

[8] 4 CCR 723-1-1303(b).

29. Subparagraphs 3109(f)(III) and 4109(f)(III) set forth the process by which the Commission will certify a utility base rate tariff filing as complete.

30. First, the utility shall serve a copy of the utility base rate tariff filing on all parties to its previous base rate proceeding within three business days of the utility's base rate tariff filing with the Commission.

31. Second, any person affected by the base rate tariff filing may submit a written protest addressing the certification of the filing with respect to completeness. Such protest must be filed sufficiently in advance of the effective date of the base rate tariffs.

32. Third, the Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The filing of advice letters for utility tariffs is governed, in part, by the provisions in § 40-6-111, C.R.S. For instance, pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days by setting the matter for hearing. Subparagraphs 3109(f)(III)(c) of the modified Electric Rules and subparagraph 4109(f)(III)(c) of the modified Gas Rules thus incorporate the suspension provisions for advice letter tariff filings in § 40-6-111, C.R.S., so that the utility and the parties are afforded the time to implement procedures in order for the Commission to resolve whether a base rate tariff filing is complete pursuant to § 40-3-102.5(1)(b), C.R.S.

33. Finally, subparagraphs 3109(f)(III)(d) of the modified Electric Rules and subparagraph 4109(f)(III)(d) of the modified Gas Rules provide the utility an opportunity to remedy its base rate tariff filing so that the Commission may determine that the filing is complete. The Commission may condition the certification of the remedied utility base rate tariff

filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.

34. In accordance with § 40-3-102.5(1)(b), C.R.S., subparagraphs 3109(f)(IV) and 4109(f)(IV) state that the Commission shall not issue a decision approving a modified base rate if the base rate tariff filing has been determined to be incomplete and the filing has not been cured by the utility. Likewise, subparagraphs 3109(f)(V) and 4109(f)(V) specify that the Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.

35. Due to the modifications to Rule 3109 of the Electric Rules and Rule 4109 of the Gas Rules described above, we strike the provisions in subparagraph 3109(b)(III) and 4109(b)(III) because they are no longer necessary.

4. Rate Trend Report

36. Section 40-3-102.5(2), C.R.S., requires electric and gas utilities to provide a "rate trend report" when filing any request to increase a rate, charge, fee, fare, toll, rental, or classification. A rate trend report presents changes in the rate, charge, etc., over the previous ten years and includes: (1) the amount of increase relative to the amount in effect on the date of the utility's filing; (2) the "annual total amount" of the rate, charge, etc.; and (3) a chart, graph, or "other visualization" of each of the utility's rates, charges, etc., including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to the date of the utility filing. In addition, a rate trend report must include, for the same rate, charge, etc., over the ten years prior to the date of the utility's filing: (1) the dates when a previous increase or decrease went into effect; (2) the amount of the rate, charge, etc. before a previous

increase or decrease went into effect; (3) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect; and (4) the proceeding number for the tariff filing where the rate, charge, etc. either was allowed to go into effect by operation of law or was approved by the Commission.

37. Section 40-3-102.5(2)(b), C.R.S., emphasizes the role of the rate trend report plays in informing the public about potential increases in utility rates and about the historical context for such rate increases. The utility is required to post on its website the rate trend report data, including the chart, graph, or pictographic demonstration for the ten-year historical trend submitted as part of each filed rate trend report.

38. Paragraph 3109(e) of the modified Electric Rules and paragraph 4109(e) of the modified Gas Rules implement the provisions in § 40-3-102.5(2)(a), C.R.S. Most of the provisions in these modified rules correspond directly to the language in the statute, however some terms are modified to match the common ratemaking lexicon of the Commission, the utilities, and the parties to rate cases.

39. Notably, the temporary rules make a specific clarification in the rules to implement the provision requiring the rate trend report provide the "the annual total amount of the rate, charge, fee, fare, toll, rental, or classification." We conclude that the "annual total amount" is best represented by the annual revenues collected or expected to be collected from the rate as proposed in the utility's filing and that the historic trend is demonstrated by the collected annual revenues in the ten years prior to the filing. This interpretation of "annual total amount" aligns with the new statutory definition of a test year and the concept of a revenue requirement being calculated for a given test year

40. In accordance with § 40-3-102.5(2)(a), C.R.S., a rate trend report is required only in instances where a utility files a request to increase any rate, charge, etc. The rules that address the types of filings a utility makes to request to change a rate or tariff are therefore modified to cross-reference paragraph 3109(e) of the Electric Rules and paragraph 4109(e) of the Gas Rules.

5. Annual Rate Compliance Report

41. Section 40-3-114, C.R.S., requires the Commission to prohibit electric and gas utilities from using ratepayer funds to subsidize nonregulated activities. The new statute further prohibits utilities from recovering several types of expenses from ratepayers.

42. Although we conclude that temporary rules are not necessary to implement the provisions in §§ 40-3-114(1) through (4), C.R.S, upon the effective date of SB 23-291, § 40-3-114(5), C.R.S, states that the Commission shall require electric and gas utilities to file an annual report to ensure their compliance with the requirements in § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers as set forth in the statute.

43. Accordingly, through these temporary rules adopted by this Decision, we introduce a new Rule 3350 in the Electric Rules and Rule 4350 in the Gas Rules to cause the annual reporting to take effect pursuant to a Commission requirement upon the effective date of SB 23-291. Rule 3350 and 4350 will be the location of the rules promulgated in the permanent rulemaking to fully implement the rate-related provisions of SB 23-291.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this proceeding, through the Commission's E-Filings system, are hereby adopted as temporary rules, consistent with the discussion above.

2. The temporary rules shall be effective on the Mailed Date of this Decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 9, 2023.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
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Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2023-00532

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 08/14/2023

4 CCR 723-4

RULES REGULATING GAS UTILITIES

The above-referenced rules were submitted to this office on 08/15/2023 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.

September 01, 2023 09:32:11

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Naturopathic Doctor Registration

CCR number

4 CCR 749-1

Rule title

4 CCR 749-1 NATUROPATHIC DOCTORS RULES AND REGULATIONS 1 - eff 08/22/2023

Effective date

08/22/2023

Expiration date

12/20/2023

DEPARTMENT OF REGULATORY AGENCIES

Office of Naturopathic Doctor Registration

NATUROPATHIC DOCTORS RULES AND REGULATIONS

4 CCR 749-1

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

…

1.8 Definitions

The purpose of this Rule is to define terms used in these Rules and the Naturopathic Doctor Act.

…

F. "Licensed Pediatric Health Care Provider" means a licensed physician, an advanced practice nurse, or a certified midwife who treats children.

…

Editor's Notes

History

Entire rule eff. 02/14/2014.
Rule 10 emer. rule. eff. 05/23/2014.
Rules 1.B.4, 7-12, Appendix A eff. 06/01/2014.
Rule 10 eff. 08/30/2014.
Rules 5, 13-15 eff. 07/01/2015.
Rules 7, 8, 11, 16, Appendix A, Appendix B eff. 06/30/2016.
Rule 1.17, Appendix C emer. rules eff. 01/01/2020; expired 04/29/2020.
Rule 1.17, Appendix C eff. 04/30/2020.
Rules 1.7, 1.19, Appendix D eff. 12/15/2020.
Rules 1.19 E-F eff. 05/30/2021.
Rules 1.20, 1.21 emer. rules eff. 08/15/2022.
Rule 1.10 C eff. 09/14/2022.
Rules 1.17, 1.20, 1.21, Appendix C eff. 11/30/2022.

Annotations

Rule 1.19 E.4 (adopted 10/21/2020) was not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

EMERGENCY RULE ADOPTION ORDER

Office of Naturopathic Doctor Registration

IT IS HEREBY ORDERED:

The attached emergency rule is promulgated in compliance with sections 12-20-204, 12-250-105(1)(a), and 24-4-103, C.R.S., to implement Colorado Senate Bill 23-167 (Concerning the Regulation of Certified Midwives by the State Board of Nursing, and, in Connection Therewith, Making an Appropriation) by adding "certified midwife" to the rule definition of "Licensed Pediatric Health Care Provider."

Basis

The basis for this rule is to carry out the provisions of the Naturopathic Practice Act at section 12-250-101, *et seq.*, C.R.S. The specific statutory authorities that authorize this rulemaking are pursuant to sections 12-20-204, 12-250-105(1)(a), and 24-4-103, C.R.S.

Purpose

The purpose of adopting revisions to Rule 1.8 is imperatively necessary to comply with the requirements of state law. Therefore, I hereby adopt these rules on a permanent basis, and incorporate by reference the statements of basis, purpose, and statutory authority, pursuant to section 24-4-103(4)(c), C.R.S.

JUSTIFICATION

Pursuant to section 24-4-103(6)(a), C.R.S., a emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The adoption of this rule on an emergency basis is imperatively necessary to comply with the requirements and effective date of state law. Therefore, I hereby adopt this rule as printed and amended, and incorporate by reference the statements of basis, purpose, and statutory authority, pursuant to section 24-4-103(4)(c), C.R.S. These temporary/emergency rules take effect on the date of adoption, and remain in effect for no more than 120 days after adoption of this emergency rule.

Adopted this 22nd day of August, 2023.

Sam Delp, Division Director
Division of Professions and Occupations

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2023-00548

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Office of Naturopathic Doctor Registration

on 08/22/2023

4 CCR 749-1

NATUROPATHIC DOCTORS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/22/2023 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.

September 08, 2023 10:01:24

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Public Safety

Agency

Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-49

Rule title

8 CCR 1507-49 URGENT INCIDENT RESPONSE FUND 1 - eff 08/24/2023

Effective date

08/24/2023

Expiration date

12/22/2023

DEPARTMENT OF PUBLIC SAFETY DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Urgent Incident

Response Fund 8 CCR

1507-49

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The General Assembly enacted section 24-33.5-1623, C.R.S. via House Bill 23-1270 to create the Urgent Incident Response Fund. The bill was signed into law on June 1, 2023. The statute mandates that the Director of the Division of Homeland Security and Emergency Management shall promulgate rules and regulations concerning the criteria for applying for reimbursement, eligibility for determining the amount of reimbursement, and the distribution of receipt of an approved reimbursement from this fund.

The purpose of this emergency rulemaking is to establish new rules as soon as practicable after a reappropriation has been made and the funds have been transferred from the General Fund to the Urgent Incident Response Cash Fund as set forth in section 24-33.5-1623(2) and (3), C.R.S. Because the statute is necessary for the immediate preservation of the public peace, health or safety, delay in the promulgation of these rules would be contrary to the statutory mandate. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

Digitally signed by Kevin R. Klein
DN: cn=Kevin R. Klein, o=Colorado Division of Homeland Security and Emergency Management, ou, c=US
Date: 2023.08.24 10:28:38 -06'00'

8/24/2023

Kevin Klein
Director, Division of Homeland Security and Emergency Management

Date of Adoption

Colorado Department of Public Safety

Division of Homeland Security and Emergency

Management 8 CCR 1507-49

Colorado Urgent Incident Response Fund

1. Authority

This regulation is adopted pursuant to the authority in section 24-33.5-1623, C.R.S., and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA").

2. Scope and Purpose

This regulation shall govern the use of the Colorado Urgent Response Incident Fund (Fund), including:

1. Applying for reimbursement;
2. Eligibility for determining the amount of reimbursement; and
3. The distribution and receipt of an approved reimbursement.

This regulation does not apply to reimbursement to state agencies and local governments at the level of disasters, emergencies, or disaster emergencies as defined in sections 24-33.5-702, 24-33.5-703, and 24-33.5-704, C.R.S.

3. Applicability

The provisions of this section shall be applicable to all eligible applicants as provided by law.

4. Definitions

"Division" means the Division of Homeland Security and Emergency Management, within the Colorado Department of Public Safety.

"Fund" means the urgent incident response fund created in section 24-33.5-1623 (2), C.R.S.

"Local Government" means a city, county, municipality, city and county, tribal government, or any other political subdivision of the state that is not a state agency.

"Quarterly Progress Report" means a written form or other document determined by the state agency to indicate and report the operational and financial activity of the recipient during the time period specified.

"Reimbursement Request" means a written form or other document determined by the state agency to be used by the fund recipient to request reimbursement from the fund for qualifying expenditures.

"State Agency" means any department, division, commission, council, board, bureau, committee, office, agency, or other governmental unit of the state.

"Summary Report" means a written form or other document determined by the state agency allowing the fund recipients to report the final operational and financial activity of the funds.

"Urgent Incident" means any incident that does not rise to the level of a disaster, an emergency, or a disaster emergency and for which programmatic responsibilities are already in place.

5. Program Requirements

5.1 Eligibility

A. Eligibility is limited to State Agencies and Local Governments as defined above.

5.2 Urgent Incident Need

A. Eligible recipients must demonstrate an urgent need beyond expected programmatic responsibilities and document why the circumstances were not programmed and are urgent, but do not rise to the level of an emergency, a disaster, or a disaster emergency.

5.3 Request for Funding

A. Eligible applicants must submit a written request in the application developed by the Division.

5.4 Amount of the Reimbursement

A. Reimbursement shall not exceed the annual appropriation.

5.5. Determining the Amount of Reimbursement

A. The amount of the reimbursement is at the discretion of the Division and will be determined in a collaborative process with the eligible applicant.

B. The Division will take into consideration:

1. The urgency of the circumstances;
2. The financial capability of the applicant;
3. Cost sharing; and,
4. Other factors that may be applicable to the applicant's need.

5.6 Distribution of Funds

A. For local government awardees, funds will be distributed according to the terms of the Division.

B. For state agency awardees, funds will be distributed according to the terms in the approved State of Colorado Interagency Agreement.

C. Based upon an articulated need, the Division may advance funds to awardees.

5.7 Reporting Requirements

A. Awardees will provide the division with reports consistent with the requirements in the appropriate grant agreement or interagency agreement including, but not limited to:

1. Quarterly Progress Reports
2. Summary Report upon completion of the project; and,
3. Reimbursement Requests

6. Restrictions

A. The Fund cannot be used for any of the following purposes:

1. For any of the purposes specified in section 24-33.5-702, C.R.S.;

2. To reimburse state agencies or local governments for the costs of responding to disasters as defined in section 24-33.5-703 (3) or emergencies as defined in section 24-33.5-703 (3.5), C.R.S.; or

3. For the purpose of responding to a disaster emergency declared pursuant to section 24-33.5-704, C.R.S.

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Urgent Incident Response Fund

8 CCR 1507-49

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The General Assembly enacted section 24-33.5-1623, C.R.S. via House Bill 23-1270 to create the Urgent Incident Response Fund. The bill was signed into law on June 1, 2023. The statute mandates that the Director of the Division of Homeland Security and Emergency Management shall promulgate rules and regulations concerning the criteria for applying for reimbursement, eligibility for determining the amount of reimbursement, and the distribution of receipt of an approved reimbursement from this fund.

The purpose of this emergency rulemaking is to establish new rules as soon as practicable after a reappropriation has been made and the funds have been transferred from the General Fund to the Urgent Incident Response Cash Fund as set forth in section 24-33.5-1623(2) and (3), C.R.S. Because the statute is necessary for the immediate preservation of the public peace, health or safety, delay in the promulgation of these rules would be contrary to the statutory mandate. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

Digitally signed by Kevin R. Klein
DN: cn=Kevin R. Klein, o=Colorado Division of Homeland Security and Emergency Management, ou, email=kevin.klein@state.co.us, c=US
Date: 2023.08.24 10:28:38 -06'00'

Kevin Klein
Director, Division of Homeland Security and Emergency Management

8/24/2023
Date of Adoption

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2023-00554

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Homeland Security and Emergency Management

on 08/24/2023

8 CCR 1507-49

URGENT INCIDENT RESPONSE FUND

The above-referenced rules were submitted to this office on 08/24/2023 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.

September 08, 2023 10:15:55

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Tracking number

2023-00537

Termination date

09/13/2023

Reason for termination

Additional changes are being considered for this rule, we will have a second Hearing to gather stakeholder feedback.

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-3

Tracking number

2023-00583

Termination date

09/07/2023

Reason for termination

The proposed Rule changes include a change to the licensing fees for Fantasy Contest Operators. We were not able to get the required letter to the General Assembly served in a timely manner so we are cancelling this Rulemaking and will file a new one when we are sure that the letter to the GA has been served.

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 09/21/2023

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

September 25, 2023

Medicaid State Plan Amendment – Rate Update for Hospice Services

The Department intends to submit a State Plan Amendment, effective October 1, 2023, to increase Hospice provider rates by 3.1% in accordance with the Department's appropriated budget. Hospice services are reimbursed in accordance with federal CMS guidelines based on the hospice wage index and are regionally adjusted for Routine Care and Continuous Home Care.

An updated fee schedule reflecting these rate changes will be posted on the Department's Website upon approval.

The annual aggregate increase in hospice expenditures (including state funds and federal funds) is $497,447 (state share $248,723.50; federal share $248,723.50) in FFY 2024 and $516,210 (state share $258,105; federal share $258,105) in FFY 2025.

General Information

A link to this notice will be posted on the Department's website starting on September 25, 2023. Written comments may be addressed to:

Director, Health Policy Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

County Contact Information

Copies of the proposed changes are available for public review at the following county locations:

County Name	Official Name	Physical Address	Mailing Address
Adams	Adams County Human Services Department	11860 Pecos Street Westminster, CO 80234	Same as physical

Alamosa	Alamosa County Department of Human Services	8900 C Independence Way, Alamosa, CO 81101	PO Box 1310, Alamosa, CO 81101
Arapahoe	Arapahoe County Human Services	14980 E. Alameda Dr., Aurora, CO 80012	14980 E. Alameda Dr., Aurora, CO 80012
Arapahoe	Satellite Office	1690 W. Littleton Blvd., Littleton, CO 80120	
Archuleta	Archuleta County Human Services	551 Hot Springs Blvd., Pagosa Springs, CO 81147	PO Box 240, Pagosa Springs, CO 81147
Baca	Baca County Department of Social Services	772 Colorado St. Ste #1, Springfield, CO 81073	Same as physical
Bent	Bent County Social Services	138 6th Street, Las Animas, CO 81054	Same as physical
Boulder	Boulder County Department of Housing & Human Services	3400 Broadway, Boulder, CO 80304	PO Box 471, Boulder, CO 80306
Broomfield	Broomfield Health and Human Services	100 Spader Way, Broomfield, CO 80020	Same as physical
Chaffee	Chaffee County Department of Human Services	448 E. 1st St, Ste 166, Salida, CO 81201	PO Box 1007, Salida, CO 81201
Cheyenne	Cheyenne County Department of Human Services	560 W. 6 N, Cheyenne Wells, CO 80810	PO Box 146, Cheyenne Wells, CO 80810
Conejos	Conejos County Department of Social Services	12989 Cty. Rd. G.6, Conejos, CO 81129	PO Box 68, Conejos, CO 81129
Costilla	Costilla County Department of Social Services	233 Main St, San Luis, CO 81152	Same as physical
Crowley	Crowley County Department of Human Services	631 Main Street Ste 100, Ordway, CO 81063	Same as physical
Custer	Custer County Department of Human Services	205 S. 6th St., Westcliffe, CO 81252	PO Box 929 Westcliffe, CO 81252
Delta	Delta County Department of Human Services	560 Dodge St, Delta, CO 81416	Same as physical
Denver	Denver Department of Human Services	1200 Federal Blvd, Denver, CO 80204	Same as physical
Dolores	Dolores County Department of Social Services	409 Main Street, Dove Creek, CO 81324	PO Box 485 Dove Creek, CO 81324
Douglas	Douglas County Department of Human Services	4400 Castleton Court, Castle Rock, CO 80109	Same as physical

Eagle	Eagle County Department of Human Services	551 Broadway, Eagle, CO 81631	PO Box 660, Eagle, CO 81631
El Paso	El Paso County Department of Human Services	1675 W. Garden of the Gods Road, Colorado Springs, CO 80907	Same as physical
Elbert	Elbert County Health and Human Services	75 Ute. Ave, Kiowa, CO 80117	PO Box 924, Kiowa, CO 80117
Fremont	Fremont County Department of Human Services	172 Justice Center Road, Canon City, CO 81212	Same as physical
Garfield	Garfield County Department of Human Services	195 W. 14th St., Rifle, CO 81650	Same as physical
Gilpin	Gilpin County Department of Human Services	2960 Dory Hill Rd. Ste 100, Black Hawk, CO 80422	Same as physical
Grand	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Huerfano	Huerfano County Department of Social Services	121 W. 6th St., Walsenburg, CO 81089	Same as physical
Jackson	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Jefferson	Jefferson County Human Services	900 Jefferson County Parkway, Golden, CO 80401	Same as physical
Kiowa	Kiowa County Department of Social Services	1307 Maine St., Eads, CO 81036	PO Box 187, Eads, CO 81036-0187
Kit Carson	Kit Carson County Department of Human Services	252 S. 14th St., Burlington, CO 80807	PO Box 70, Burlington, CO 80807
La Plata	La Plata County Department of Human Services	10 Burnett Court 1st Floor, Durango, CO 81301	Same as physical
Lake	Lake County Department of Human Services	112 W. 5th St. Leadville, CO 80461	PO Box 884 Leadville, CO 80461
Larimer	Larimer County	1501 Blue Spruce Drive	Same as physical
Las Animas	Las Animas County Department of Human Services	204 S. Chestnut St., Trinidad, CO 81082	Same as physical
Lincoln	Lincoln County Department of Human Services	103 3rd Ave, Hugo, CO 80821	PO Box 37, Hugo, CO 80821
Logan	Logan County Department of Human Services	508 S. 10th Ave, STE B, Sterling, CO 80751	Same as physical

Mesa	Mesa County Department of Human Services	510 29 1/2 Rd, Grand Junction, CO 81504	PO Box 20000, Grand Junction, CO 81502
Mineral	Rio Grande/Mineral County Department of Social Services	1015 6th St, Del Norte, CO 81132	Same as physical
Moffat	Moffat County Department of Social Services	595 Breeze St., Craig, CO 81625	Same as physical
Montezuma	Montezuma County Department of Social Services	109 W. Main St. Room 2013, Cortez, CO 81321	Same as physical
Montrose	Montrose County Health & Human Services	1845 S. Townsend Ave., Montrose, CO 81401	PO Box 216, Montrose, CO 81402-216
Morgan	Morgan County Department of Human Services	800 E. Beaver Ave., Fort Morgan, CO 80701	PO Box 220, Fort Morgan, CO 80701
Otero	Otero County Department of Human Services	215 Raton Ave, La Junta, CO 81050	PO Box 494, La Junta, CO 81050
Ouray	Ouray DSS	177 Sherman St., Unit 104, Ridgway, CO 81432	PO Box 530 Ridgway, CO 81432
Phillips	Phillips County Department of Social Services	127 E Denver St., Holyoke, CO, 80734	Same as physical
Pitkin	Pitkin County Department of Health and Human Services	0405 Castle Creek Rd., Suite 104, Aspen, CO 81611	Same as physical
Pueblo	Pueblo County Department of Social Services	201 W. 8th St, Pueblo, CO 81003	320 W. 10th St, Pueblo, CO 81003
Rio Blanco	Rio Blanco County Department of Health and Human Services	345 Market St., Meeker, CO 81641	Same as physical
Routt	Routt County Department of Human Services	135 6th St., Steamboat Springs, CO 80477	PO Box 772790, Steamboat Springs, CO 80477
Saguache	Saguache County Department of Social Services	605 Christy Ave, Saguache, CO 81149	PO Box 215, Saguache, CO 81149
San Miguel	San Miguel DSS	333 W. Colorado Ave, Telluride, CO 81435 (San Miguel);	PO Box 96 Telluride, CO 81435
Sedgwick	Sedgwick County Human Services	118 W. 3rd St., Julesburg, CO 80737	PO Box 27, Julesburg, CO 80737
Washington	Washington County DHS	126 W. 5th St., Akron, CO 80720	PO Box 395, Akron, CO 80720

Yuma	Yuma County Department of Human Services	340 S. Birch, Wray, CO 80758	Same as physical

Calendar of Hearings

Hearing Date/Time	Agency	Location
10/26/2023 11:00 AM	Division of Motor Vehicles	Virtual
10/30/2023 12:00 PM	Marijuana Enforcement Division	1707 Cole Blvd. Suite 300, Lakewood, CO 80401
11/08/2023 09:00 AM	Colorado State Board of Education	201 E. Colfax, Denver
11/08/2023 09:00 AM	Colorado State Board of Education	201 E. Colfax, Denver
10/16/2023 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver, CO 80202
10/16/2023 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver, CO 80202
10/25/2023 09:30 AM	Division of Professions and Occupations - State Board of Nursing	Webinar only - See below
10/25/2023 09:00 AM	Division of Professions and Occupations - State Plumbing Board	Webinar only - See below
10/20/2023 09:00 AM	Division of Professions and Occupations - State Board of Unlicensed Psychotherapists	Webinar only - See below
10/27/2023 09:00 AM	Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners	Webinar only - See below
10/17/2023 04:30 PM	Division of Family and Medical Leave Insurance	Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn
10/17/2023 04:30 PM	Division of Family and Medical Leave Insurance	Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn
10/17/2023 04:30 PM	Division of Family and Medical Leave Insurance	Online: Zoom: https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn
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10/17/2023 04:30 PM	Division of Family and Medical Leave Insurance	Online: Zoom:https://us02web.zoom.us/meeting/register/tZYlc-irrz8tHtCkijyRlcPFPwSupYAMp8bn
10/18/2023 09:30 AM	Plant Industry Division	via Zoom - link is contained in the hearing notice
10/18/2023 10:30 AM	Plant Industry Division	via Zoom - link is contained in the hearing notice
10/27/2023 10:00 AM	Child Care Program Licensing	Webinar Only: https://us02web.zoom.us/meeting/register/tZUpf-yprz0tGtEr5OhRvoKmvfLqXaRAlmNY
10/27/2023 10:00 AM	Colorado Child Care Assistance Program	Webinar Only: https://us02web.zoom.us/meeting/register/tZUpf-yprz0tGtEr5OhRvoKmvfLqXaRAlmNY
10/17/2023 01:00 PM	Secretary of State	Please see the Additional Information section for details.