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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.

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Notice of Proposed Rulemaking

Tracking number

2016-00456

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

SALES AND USE TAX

Rulemaking Hearing**Date**

10/19/2016

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO

Subjects and issues involved

The purpose of this rule is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., including the process for requesting exemption certificates and refunds for tax paid.

Statutory authority

The statutory basis for this rule is § 39-21-112(1), § 39-26-704(1.5), § 29-4-227, § 29-1-204.5, and § 29-4-507, C.R.S.

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SALES TAX EXEMPTION FOR HOUSING AUTHORITIES

RULE 39-26-704(1.5)

Basis and Purpose

The basis for this rule is § 39-21-112(1), § 39-26-704(1.5), § 29-4-227, § 29-1-204.5, and § 29-4-507, C.R.S. The purpose of this rule is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., including the process for requesting exemption certificates and refunds for tax paid. To alleviate the administrative burden on housing authorities, an affidavit, as described in this rule, may be submitted in lieu of receipts for refund claims for state sales and use tax paid prior to September 30, 2016. Receipts are required for refunds of state sales and use tax paid after September 30, 2016 and for local sales tax paid after August 10, 2016. These refund claims requiring receipts are expected to be infrequent because, beginning August 10, 2016, exemption certificates will be available to prevent the payment of tax at the point of sale, thus reducing the burden on housing authorities. Receipts are required for refunds of all local sales taxes claimed because local sales taxes can often be exempted at the point of sale with a building permit, which would have been obtained for all projects prior to construction.

(1) General Rule.

- (a) *Exemption for Housing Authorities.* All sales to and all storage, use, or consumption of tangible personal property or otherwise taxable services by Housing Authorities are exempt from state, local, and special district sales and use taxes.
- (b) *Exemption for Qualifying Projects.* Beginning August 10, 2016, an exemption from state, local, and special district sales and use taxes is allowed to any Qualifying Entity for any Qualifying Project in the manner described in this rule. Only **state** sales and use taxes paid prior to August 10, 2016 are eligible to be refunded. Local sales and use taxes paid prior to August 10, 2016 are not eligible to be refunded. Eligible Qualifying Projects should obtain exemption certificates beginning August 10, 2016 in order to make purchases tax-free after that date. In the event, expected to be rare, that sales and use taxes are paid on or after August 10, 2016, refunds for all sales and use taxes paid will be made in accordance with subsection (3)(f) of this rule.

(2) Definitions.

- (a) "Authority" or "Housing Authority" means:
 - (i) A city housing authority as defined in § 29-4-203(1), C.R.S., or
 - (ii) A multijurisdictional housing authority established under § 29-1-204.5, C.R.S., or
 - (iii) A county housing authority as defined in § 29-4-502(1), C.R.S.
- (b) "Department" means the Department of Revenue.
- (c) "Qualifying Entity" means an entity that is *wholly or partially* owned by:
 - (i) A Housing Authority, or
 - (ii) An entity that is wholly owned by a Housing Authority, or

- (iii) An entity of which a Housing Authority is the sole member.
- (d) "Qualifying Project" means a project, as defined in § 29-4-203(12), C.R.S., that is wholly owned by, leased to, or under construction by a Qualifying Entity. A Qualifying Project will involve capitalizable expenditures.

(3) **Sales and Use Tax Exemption for Qualifying Projects.**

- (a) The exemption for Qualifying Projects under paragraph (b) of subsection (1) of this rule applies only to tangible personal property and otherwise taxable services purchased, acquired, stored, used, or consumed for Qualifying Projects during the construction period determined under paragraph (b) of this subsection (3).
- (b) *Determination of Construction Period.* The exemption under paragraph (b) of subsection (1) of this rule applies only during the construction of a Qualifying Project. The Housing Authority shall determine and certify the beginning and ending dates for the construction of the Qualifying Project and the period of time defined thereby will be the construction period for the Qualifying Project.
- (c) *Determination of Low-Income Percentage.* The exemption allowed under paragraph (b) of subsection (1) of this rule is in proportion to the percentage of the project that is for occupancy by persons of low income. The Housing Authority shall determine and certify this percentage and such determination shall be presumed valid absent manifest error.
 - (i) With respect to the definition of "low income" used in the determination made under this paragraph (c), no manifest error exists where a Qualifying Entity uses a definition established by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.
 - (ii) With respect to the calculation of the percentage of the project that is for occupancy by persons of low income made under this paragraph (c), no manifest error exists where the calculation by the Qualifying Entity is consistent with any such calculation made in accordance with rules prescribed by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.
- (d) *Application for Exemption for Qualifying Projects.* Exemption certificates may be requested from the Department for any Qualifying Project to allow Qualifying Entities and contractors to make tax-free purchases for the Qualifying Project. The exemption certificate may be requested by the Qualifying Entity, the general contractor for the Qualifying Project, or both by completing and submitting the appropriate application. The application must be accompanied by a statement from the Housing Authority detailing the Authority's ownership interest in the Qualifying Entity, certifying the percentage calculated under paragraph (c) of this subsection (3), and certifying the construction period determined under paragraph (b) of this subsection (3).
- (e) *Remittance of Tax for Mixed Use Qualifying Projects.* Qualifying Entities that own, lease, or construct Qualifying Projects for which an exemption certificate is issued under paragraph (d) of this subsection (3), and for which the percentage calculated under paragraph (c) of this subsection (3) is less than 100% periodically must file sales tax returns and remit payment of the sales tax for the percentage of the Qualifying Project that is not exempt.

- (i) Except as provided in subparagraph (ii) of this paragraph (e), such filing and payment shall be made at least quarterly and shall be made in accordance with all rules governing the filing and payment of sales tax generally.
 - (ii) If the aggregate annual sales or use tax a Qualifying Entity must remit under this paragraph (e) is less than five thousand dollars, the Qualifying Entity may request from the executive director and the executive director may grant permission to file and remit sales tax under this paragraph (e) on an annual filing basis.
- (f) *Refund Claims for Qualifying Projects.* A Qualifying Entity that owns, leases, or constructs a Qualifying Project may, subject to the percentage determined under paragraph (c) of this subsection (3), submit a refund claim for sales and use taxes paid.
- (i) A refund claim for a Qualifying Project must be submitted by the Qualifying Entity, not by a contractor performing work for the Qualifying Project.
 - (ii) Any refund claim submitted under this paragraph (f) must meet the following requirements:
 - (A) The refund claim must be submitted on the appropriate Departmental form ("Claim for Refund of Tax Paid to Vendors").
 - (B) The refund claim must be accompanied by a statement from the Housing Authority certifying:
 - (I) The Housing Authority's place in the ownership structure of the Qualifying Entity, and
 - (II) The percentage determined under paragraph (c) of this subsection (3).
 - (C) In the case of state sales or use taxes paid prior to September 30, 2016, the refund claim must be accompanied by an affidavit, signed under penalty of perjury by the Housing Authority, affirming that:
 - (I) The refund claim is for sales or use tax that actually was paid to vendors or was paid directly to the Department, and
 - (II) The amount of the claim includes only Colorado state sales or use tax and not any local or special district taxes.
 - (D) In the case of local and special district sales and use taxes paid on or after August 10, 2016 or state sales and use taxes paid on or after September 30, 2016, the refund claim must be accompanied by all necessary documentation, including receipts or invoices, required under Department rules, guidance, and instructions for refund claims generally.

Cross Reference(s):

1. FYI Income 90.
2. Form DR 0137B and associated instructions.

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Cross Reference(s):

1. FYI Income 90.
2. Form DR 0137B and associated instructions.

Notice of Proposed Rulemaking

Tracking number

2016-00448

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-20

Rule title

MOTORCYCLE RULES AND REGULATIONS FOR ALMOST ORGANIZATIONS

Rulemaking Hearing**Date**

10/17/2016

Time

01:00 PM

Location

1881 Pierce Street, Lakewood, CO 80214; Rm 110 (Board/Commission Meeting Room)

Subjects and issues involved

These rules establish the certification and operational requirements for the conduct of certified third party motorcycle rider skills testers.

Statutory authority

24-4-103; 42-1-102(43.5); 42-1-102(55); 42-1-102(58); 42-1-204; 42-1-222; 42-2-103; 42-2-106 and 42-2-111; 42-4-205; 42-4-232; 42-4-1502, C.R.S. (2016)

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DEPARTMENT OF REVENUE

Division of Motor Vehicles

MOTORCYCLE RULES AND REGULATIONS FOR ALMOST ORGANIZATIONS

1 CCR 204-20

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

A. STATUTORY BASIS AND PURPOSE

(1) ~~Motorcycle Third Party Testing Intent~~

The rules contained herein are intended to provide operating and procedural instructions to third-party organizations for the administration of the two-wheel and three-wheel motorcycle skills tests to candidates for the addition of the motorcycle operators M or 3 endorsements to a valid Colorado driver's license.

(2) ~~Need for Rules~~

To facilitate the extension of departmental services through third party testing organizations as provided for by CRS 42-2-111(b)

(3) ~~Authority to Make Rules~~

(a) ~~CRS: 42-1-204: Uniform rules and regulations. The executive director of the department has the power to make uniform rules and regulations not inconsistent with articles 1 to 4 of this title and to enforce the same.~~

(b) ~~CRS: 42-2-111(b): The department, in issuing the driver license for certain types of general classes of vehicles, may waive any examination required by paragraph (a) of this subsection (1) for applicants and may certify certain employers, governmental agencies, or other appropriate organizations to train and examine all applicants for such certain types or general classes of licenses, if such training and examination is equal to the training and examination of the department.~~

B. DEFINITIONS AS USED IN THESE RULES

(1) ~~**Motorcycle** : CRS 42-1-102(55), defines a motorcycle as a motor vehicle that is designed to travel on not more than three wheels in contact with the ground.~~

(a) ~~**Motor Vehicle** — See: CRS 42-1-102(58) defines a self-propelled vehicle that is primarily designed to travel on the public highways.~~

(2) ~~**Alternate Motorcycle Operator Skills Test (ALMOST)** : The motorcycle driving skill test given to applicants operating a motorcycle provided by the applicant, over a set course, where their performances are observed and recorded by a trained examiner.~~

(3) ~~**Alternate Motorcycle Operator Skills Testing Organization (ALMOST Organization)** : A third-party testing organization who has received certification from DECS to conduct ALMOST or an organization that has received successful completion of any Department approved 3-wheel tester training.~~

- (4) ~~**ALMOST Certification**~~ : A certification to a Motorcycle School or Commercial Driving School, allowing an ALMOST organization to conduct Third Party Testing to applicants for a motorcycle endorsement.
- (5) ~~**Alternate Motorcycle Operator Skills Tester (ALMOST Tester)**~~ : An individual employed by an ALMOST Organization that has been certified by DECS to administer the ALMOST.
- (6) ~~**Alternate Motorcycle Skills Testing Course (ALMOST Course)**~~ : a course painted and measured according to motorcycle safety foundation standards and pre-approved for testing by DECS.
- (7) ~~**DECS**~~ : (the Department of Revenue, Division of Motor Vehicles) Driver Education Compliance Section.
- (8) ~~**Department**~~ : Means the Department of Revenue, Division of Motor Vehicles, Driver License Administration.

C. CERTIFICATION REQUIREMENTS AS A MOTORCYCLE SKILL TESTING ORGANIZATION

- (1) ~~Enter into a contract with the Department~~
- (2) ~~The third party motorcycle skill testing organization and tester must receive certification from DECS to conduct motorcycle skill testing and to issue documents of testing completion.~~
- (3) ~~Renewal applications shall be made every year and shall run from January 1st to December 31st. All licenses expire at the end of the year and no organization is permitted to operate with an expired license. Renewal packets are due on December 1st of each year. Packets not received and approved by December 31st will cause the organization to be placed in "non-renewed" status, meaning all documents dated after December 31st will be denied by the Department. Packets that are incomplete will be returned to the school. Any school not renewed and approved prior to December 31st will need to resubmit all documentation as if a new school.~~
- (4) ~~All Organizations must notify DECS in writing within 3 business days of any changes in employee status, cessation of business, or change in ownership. All Organizations must notify DECS in writing within 10 business days of losing or gaining a test site. A "use agreement" for the site must be in file before a new test site will be approved.~~
- (5) ~~Testing must be consistent with the motorcycle safety foundation's ALMOST class or the training provided by a State adopted program(s) and using only score forms provided by the state or its adopted programs.~~
 - (a) ~~There is no fee required for the two-wheel motorcycle skill tester training or certification.~~
 - (b) ~~The organization will receive its certification and assigned testing number when their first tester receives his/her certification and tester's number.~~
- (6) ~~Organizations seeking training for individual testers and subsequent certification by the department in the testing of three-wheel motorcycles, must do so at the expense of the organization through a department approved training program.~~
 - (a) ~~Upon presentation of successful completion of the department approved three-wheel motorcycle tester training program, qualified testers will be assigned a tester number to be used for the processing of three-wheel motorcycle skill testing documents.~~
 - (b) ~~There is no fee required, by the state, for the three-wheel motorcycle skill tester certification number.~~

- ~~(7) Individual tester certification numbers are to be used solely by the employee to whom the number is assigned. Unauthorized use of certification numbers may result in the revocation of the certification for that individual.~~
- ~~(8) The testing organization shall provide DECS with a signed "use agreement" allowing the tester to paint the course and conduct tests on the property where each course is to be maintained.~~
- ~~(9) All employees of an ALMOST organization must have a CBI (name and DOB verification) background check and an original signature in blue ink on file with DECS. All ALMOST organizations will submit a CBI background check less than 2 years old and an updated signature card with each renewal packet.~~
- ~~(10) Any ALMOST Organization must maintain a Worker's Compensation Insurance package as required by Colorado State Statute, and Employer's Liability Insurance, covering all of the organization's employees acting within the course and scope of their employment. Proof of this insurance must be on file with DECS at all times. Failure to supply current insurance to the Department within 30 days of expiration or change, could cause the company testing/certificate signing to be suspended until current insurance is supplied.~~
- ~~(11) Any ALMOST Organization must maintain a Commercial General Liability Insurance policy written on an ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, property damage, independent contractors, blanket contractual liability, personal injury and advertising liability with minimum limits as follows:~~
 - ~~(a) 1,000,000 each occurrence~~
 - ~~(b) 1,000,000 general aggregate~~
 - ~~(c) 1,000,000 premises operation~~

~~D. ALMOST COURSE REQUIREMENTS~~

- ~~(1) The third party motorcycle skill testing organization is responsible for ensuring that their testing area meets departmental requirements for motorcycle skill testing.~~
- ~~(2) Only courses certified by the State, prior to any testing, may be used as a test course for the ALMOST program.~~
- ~~(3) 3-Wheel courses must be certified by the Department approved organization(s) prior to testing a 3-wheel motorcycle.~~
- ~~(4) Any third party motorcycle skill testing site must be an approved testing site with a safe surface free from defects which is not wet, icy or has snow on it.~~
- ~~(5) Courses that measure over 1/2 of an inch "out of standards" will be de-certified until corrected.~~

~~E. THIRD PARTY MOTORCYCLE SKILL TESTING ORGANIZATION~~

- ~~(1) The third party motorcycle skill testing organization is responsible for ensuring that their tester administers the motorcycle skill test to the same standard as they were trained by either the department or through a department approved program.~~
- ~~(2) The organization will allow the department to conduct random inspections and audits of the organization's motorcycle operators testing records, procedures, and measure the ALMOST course to ensure that it meets department approved standards.~~

- ~~(3) Third party testers are allowed to administer the motorcycle skill test to operators of two-wheel and three-wheel motorcycles, with appropriate certification.~~
 - ~~(a) The department will provide the skill test only to operators of two-wheel motorcycles and only at certain driver's license office locations.~~
- ~~(4) The third party motorcycle skill testing organization may establish a fee for administering the motorcycle skill test.~~
- ~~(5) Prior to administering the ALMOST the third party motorcycle testing organization must ensure the individual holds a valid Colorado motorcycle instruction permit.~~
- ~~(6) Only the organization's certified motorcycle skill testers are allowed to administer the motorcycle skill test on behalf of the organization.~~
- ~~(7) Third party motorcycle skill testing must be done during daylight hours or at approved motorcycle testing sites where there is sufficient illumination to administer and perform the test as if there was daylight.~~
- ~~(8) The organization may refuse to test any motorcycle skill applicant. Applicants for the motorcycle skill test who are refused will be referred to the driver's license offices or, in the case of a three-wheel motorcycle, to another approved testing organization.~~

F. RECORDS AND REPORTING REQUIREMENTS

- ~~(1) All Organizations are required to report all activity for each month using the required DECS forms. These reports must be received by the 10th of the month for the previous month by fax or email regardless of whether any testing was done that month. Failure to send the report by the 10th of the month for the previous month will result in suspension for 30 days for the first offense; additional offenses could result in de-certification for one year.~~
- ~~(2) All voided documents (DR2439 and DR2713) will be logged on their respective monthly reports with the voided document filed in numeric order.~~
- ~~(3) Records and documents will be filed and maintained in a central location. Testing score sheets and the organization's copy of the testing completion statement for those individuals who passed or failed the motorcycle skill test, are to be retained by the organization for three years.~~
- ~~(4) All ALMOST Organizations shall notify DECS in writing within (3) three business days of a termination of an organization's employee.~~
- ~~(5) All passed and failed written examinations shall be logged on the required "Monthly Report" for General Motorcycle/3-Wheel Motorcycle Written Knowledge Testing Completion Statement (DR2439) and each written examination will be stapled with the DR2439 (if passed) and filed with the monthly report in numeric order. All failed tests should be filed by month behind the passed tests. Form DR2439 shall be complete and without any alterations, scratched out information, or information that has been written over on the document.~~
- ~~(6) All passed and failed ALMOST tests shall be logged on the required "Monthly Report" for ALMOST/3-Wheel Motorcycle Skills Test Completion Statement (DR2713) and each DR2610 (score sheet) will be stapled with the DR2713 (if passed) and filed with the monthly report in numeric order. All failed tests should be filed by month behind the passed tests. Form DR2713 shall be complete and without any alterations, scratched out information, or information that has been written over on the document.~~

G. ~~THIRD PARTY MOTORCYCLE SKILL TESTING REQUIREMENTS FOR TESTERS~~

- ~~(1) It is the tester's responsibility to have the testing forms and equipment necessary to prepare the area for testing and to conduct the motorcycle skill test.~~
- ~~(2) ALMOST testing may only be administered on a test area that has been approved by the department.~~
- ~~(3) A tester must follow the department's requirements for administering and grading the motorcycle skill test.~~
- ~~(4) A tester is only allowed to test for the organization under which he or she is certified.~~
- ~~(5) A tester is not permitted to allow another individual to use the motorcycle skill tester's number for processing documents.~~
- ~~(6) The tester is responsible for ensuring that the testing score sheet and completion statement are completed correctly and testing records are accurate.~~
- ~~(7) Prior to administering the ALMOST, the tester shall complete the information section of the DR2610 (score sheet) and make sure to sign the score form.~~
- ~~(8) Individuals who successfully pass the motorcycle skill test will be given a DR2713 (testing completion statement). This form must be complete and contain accurate information in the required fields.~~
- ~~(9) Those applicants who fail the motorcycle skill test will have this failure noted on their driving skill testing score sheet form (DR2610). A copy of the DR2610 must be received by fax to DECS within twenty-four business hours. The organization will retain the applicant's original DR2610 with the monthly report.~~
- ~~(10) If an applicant fails the skills test, they must return on a different day to re-test. An applicant may only take 2 written permit tests per day.~~
- ~~(11) Applicants who fail the motorcycle skill test four times must be referred to the department by the testing organization to arrange for the fifth motorcycle skill test. Only the department may administer any further motorcycle skill tests.~~
- ~~(12) The tester may administer an ALMOST or 3-Wheel motorcycle test only as an employee of, and on behalf of, the certified ALMOST Organization. The tester may administer the test for more than one employer; however, the tester must be certified under each employer to conduct the testing on his/her behalf. The tester must keep all testing records separate for each testing organization.~~
- ~~(13) The tester shall issue a DR2713 completion statement for the applicant that has successfully completed the driving skills test. The DR2713 shall be complete and without any alterations, scratched out information, or information that has been written over.~~
- ~~(14) Testers shall possess a valid Colorado Driver's License and be 21 years of age.~~
- ~~(15) The tester shall ensure that the applicant has in his/her possession a current Colorado Motorcycle or 3-wheel Instruction permit.~~
- ~~(16) The tester shall not conduct any training with the applicant during any portion of the test administration. To maintain the ALMOST certification each tester must conduct 7 motorcycle tests per year. Failure to complete the designated requirements in the time period will result in the tester's suspension unless a hardship can be established.~~

~~(17) Testers must have a CBI (name and DOB verification) background check on file prior to certification. Background checks may not be more than two years old.~~

~~(18) No tester may administer the Skills or Written test to an immediate relative. The definition of an immediate relative is provided in 42-1-102 (43.5) CRS – Definitions.~~

~~H. DECERTIFICATION OR SUSPENSION OF THIRD PARTY MOTORCYCLE TESTING ORGANIZATIONS OR TESTERS~~

~~(1) The certificate of a motorcycle third party testing organization or examiner may be suspended or revoked for willful or negligent actions which may include any of the following but is not limited to:~~

~~(a) Misrepresentation on the application to be a motorcycle third party testing organization or testing examiner.~~

~~(b) Improper testing and certification of applicants who are applying for the motorcycle endorsement.~~

~~(c) Falsifying of testing documents or results.~~

~~(d) Violations of the provision of the rules related to third party testing organizations and testers.~~

~~(e) Willful action to avoid or the refusal to cooperate in a compliance audit and record review.~~

~~I. DECERTIFICATION OR SUSPENSION PROCESS FOR THIRD PARTY MOTORCYCLE SKILL TESTING ORGANIZATIONS OR SKILL TESTERS~~

~~(1) Summary Suspension:~~

~~As provided by CRS 24-4-104(3) the department may issue an immediate "Cease Testing Notice" for cause if, in the judgment of the department, the motorcycle skill testing organization or its skill tester has violated the provisions for state authorized motorcycle skill testing and continued testing operations will cause substantial danger to public health and safety. Further motorcycle skill testing is not allowed by that organization or the skill tester until the problem has been corrected to the satisfaction of the department or a hearing has been conducted by the Department of Revenue. A notification will be sent by the Driver's License Administration Section to the testing organization following the issuance of any cease testing notice stating the reason for the order.~~

~~(2) Appeal:~~

~~Organizations and/or Testers may file an appeal for a "cease testing notice" by submitting a written request to DECS.~~

~~(3) Hearing on Decertification or Suspension:~~

~~Hearing requests to appeal decertification or suspension as an authorized tester will be made by the organization or the skill tester through DECS. DECS will schedule the hearing with the Department of Revenue as provided under CRS 24-4-105 – Hearings and Determinations.~~

~~All publications and rules adopted and incorporated by reference in these regulations are on file and available for public inspection by contacting the Department of Revenue, Motor Vehicle Division, Drivers License Section, 1881 Pierce Street, room 136, Lakewood, CO. 80215. This rule does not include later amendments to or additions of any materials incorporated by reference.~~

Materials incorporated by reference may be examined at any state publication depository library.
DEPARTMENT OF REVENUE

Division of Motor Vehicles

MOTORCYCLE RULES AND REGULATIONS FOR RST ORGANIZATIONS

1 CCR 204-30 RULE 9

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

PURPOSE

These rules establish the certification and operational requirements for the conduct of certified third party motorcycle rider skills testers.

STATUTORY AUTHORITY

Sections: 24-4-103; 42-1-102(43.5); 42-1-102(55); 42-1-102(58); 42-1-204; 42-1-222; 42-2-103; 42-2-106 and 42-2-111; 42-4-205; 42-4-232; 42-4-1502, C.R.S. (2016)

(100) DEFINITIONS

- a) **Department:** The Department of Revenue.
- b) **Rider Skills Tester (RST Tester):** An individual certified by the Department to administer a Rider Skills Test or an individual certified by the Department to administer a written knowledge test or an individual certified by the Department to administer both a Rider Skills Test and written knowledge test.
- c) **Rider Skills Test (RST):** A motorcycle operating skills test in which the applicant demonstrates the applicant's ability to exercise ordinary and reasonable care and control in the operation of the motorcycle while observed and graded by an RST Tester.
- d) **Rider Skills Testing Certification (RST Certification):** A certification issued by the Department authorizing an individual or third party testing organization to administer Rider Skills Test and written knowledge tests to applicants seeking a motorcycle endorsement.
- e) **Rider Skills Testing Course (RST Course):** A Course measured and painted according to Motorcycle Safety Foundation (MSF) standards and pre-approved by the Department for use in testing.
- f) **Rider Skills Testing Organization (RSTO):** A third party testing organization certified by the Department to administer Rider Skills Tests and written knowledge tests through an RST Tester.

(150) APPLICABILITY

This Rule 9 applies to any individual or organization that offers a statutorily-mandated examination to a person seeking a motorcycle endorsement.

(200) GENERAL REQUIREMENTS FOR RSTOs

- a) Only an organization certified by the Department pursuant to this Rule 9 can employ an individual to administer an RST, a written knowledge test, or issue documents indicating test completion.

1. An organization seeking certification as an RSTO must complete and submit a Department approved application form.
 2. All certifications expire on June 30th of each year.
- b) An RSTO must enter into a written contract with the Department in order to be certified by the Department 1951630.
 - c) An RSTO must hold the State harmless from liability resulting from an RST.
 - d) An RSTO must notify the Department in writing within 3 business days of an employee's change in tester status or departure from the RSTO, cessation of its business, or any change in directors, owners, or managers.
 - e) An RSTO must notify the Department in writing within 3 business days of the loss of use or the addition of an RST Course, or if an RST Course no longer meets the requirements listed in subsection 300 of this rule.
 - f) All written knowledge and RST testing must be equivalent to examinations administered by the Department.
 - g) Testing must be consistent with RST Tester training and testers must use only score forms provided by the Department.
 - h) An applicant for certification is responsible for any fees or costs associated with RST training and certification.
 - i) An RSTO cannot administer an RST; only an RST Tester can administer an RST or written knowledge test for his/her RSTO employer.
 - j) Every RSTO owner and manager must complete "records management" training prior to certification.
 - k) An RSTO must comply with, and ensure that any RST Tester it employs complies with, applicable Colorado revised statutes, rules and regulations, and Department final orders.
 - l) An RSTO must provide the Department with the RSTO's current physical and mailing addresses, a contact phone number, and the name of one contact person who is an employee or principal of the RSTO.
 1. An RSTO must notify the Department within 3 business days of any change in its physical place of business and mailing address, contact phone number, and contact person.
 - m) All employees of an RSTO must have a CBI background check and an original signature on file with the Department.
 - n) An RSTO must submit a current CBI background check for each employee annually with its renewal packet.
 - o) The Department may deny or revoke certification of an RSTO if an owner or manager has 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.

1. 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.
- p) Insurance Requirements: An RSTO must have proof of current and valid general liability insurance and of worker's compensation insurance if required by the Workers' Compensation Act [Sections 8-40-101, et. seq. C.R.S. (2016)], on file with the Department at all times.
1. The Department must be listed on the general liability policy as a secondary insured.
 2. An RSTO must ensure that the insurance company sends the information required in this paragraph (p) to the Department.
 3. Failure to provide updated insurance information to the Department within 30 days of expiration is grounds for suspension.
- q) In the event an RSTO's certification is not renewed, or is revoked or suspended, all individual RST Tester certifications for that RSTO will be revoked or suspended.
- r) The Department will issue a unique tester number to each RST Tester. RST Testers must use only their assigned number and must not authorize another person to use their number. Unauthorized use of an assigned number may result in revocation or suspension of the RSTO's certification.
- s) An RSTO must refer the following to a Colorado driver license office:
1. an applicant requesting a written knowledge test after 4 failed attempts;
 2. an applicant with an invalid driver's license requesting any test; or
 3. an applicant unable to produce a valid photo ID.

(250) GENERAL REQUIREMENTS FOR RST TESTERS

- a) Only an individual certified by the Department as an RST Tester pursuant to this Rule 9 can administer an RST, a written knowledge test, or issue documents indicating test completion.
1. An individual seeking certification as an RST Tester must:
 - i. complete and submit a Department approved application form;
 - ii. have had a valid driver license issued by any state for at least 4 years and be at least 21 years of age;
 - iii. have a valid Colorado driver's license;
 - iv. complete and pass all Department required training; and
 - v. be employed by an RSTO.
 2. An RST Tester need not be certified as a written knowledge tester in order to be an RST Tester, however, only an RST Tester so certified can administer written knowledge tests.
 3. An applicant for RST Tester certification, or his or her employer, is responsible for any fees or costs associated with RST training and certification.

4. All RST testers must complete Refresher Training every two years.
 5. All certifications expire on June 30th of each year.
- b) An RST Tester may be employed by more than one RSTO. An RST Tester employed by more than one RSTO will be issued a separate certification number for each RSTO employing the RST Tester. An RST Tester certification is valid only while the tester is employed by the RSTO listed on the certificate.
 - c) Testing must be consistent with RST Tester training and testers must use only score forms provided by the Department.
 - d) An RST Tester must comply with applicable Colorado revised statutes, rules and regulations, and Department final orders.
 - e) The Department may deny or revoke certification of an individual who has 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.
 1. 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.
 - f) An RST Tester must follow the Department's standards when administering an RST or written knowledge test.
 - g) The Department will issue a unique tester number to each RST Tester. RST Testers must use only their assigned number and must not authorize another person to use their number. Unauthorized use of an assigned number may result in revocation or suspension of the RST Tester's certifications.
 - h) An RST Tester must refer the following to a Colorado driver license office:
 1. an applicant requesting a written knowledge test after 4 failed attempts;
 2. an applicant with an invalid driver's license requesting any test; and
 3. an applicant unable to produce a valid photo ID.
 - i) An RST Tester cannot administer any RST test to a member of their immediate family. "Immediate family" is defined in section 42-1-102(43.5), C.R.S.

(300) RST COURSE SITE REQUIREMENTS

- a) An RSTO must ensure that its RST Course meets Departmental requirements for the RST.
- b) An RSTO must provide the Department a signed "Land Use Authorization" authorizing the RSTO to paint each RST Course and to administer RST Tests on the property.
- c) The "Land Use Authorization" for an RST Course must be filed with the Department before an RST Course will be approved.
- d) RST Courses must be approved by the Department prior to RST Testing.

- e) When in use, the RST Course surface must be safe, free from defects, and free from foreign matter including, but not limited to, debris, sand, gravel, water, ice, and snow.
- f) An RST Course that measures over 1/2 of an inch "out of standards" no longer meets Department requirements; RST Testing on that Course will be summarily suspended.
- g) All RST Course markings must be plainly visible and accurate.

(400) RST TESTING REQUIREMENTS

- a) An RSTO must allow the Department to conduct random inspections and audits of the organization's RST testing records, procedures, and RST Course(s).
- b) Prior to administering an RST, RST Testers must ensure that the applicant has a valid driver's license and a valid motorcycle instruction permit in his/her immediate possession.
- c) An RSTO must ensure that only certified RST Testers employed by the RSTO administer an RST on behalf of that RSTO.
- d) RST Testing must be done during daylight hours. For purposes of this rule, "daylight hours" means the period between one-half hour before sunrise and one-half hour after sunset as sunrise and sunset as reported by the Astronomical Applications Department, U.S. Navy, <http://www.aa.usno.mil>.
- e) RST Testing must be administered only on an RST Course that has been approved by the Department.
- f) 19516621951606An RSTO and RST Tester must ensure that all testing forms are completed correctly.
- g) RST completion statements must not be partially or fully completed until after an applicant has completed and passed the RST.
- h) An RST Tester's signature on a completion statement constitutes a representation by the Tester that the applicant whose name is on the completion statement, took and passed the RST.
- i) RST Testers must note all failures on the applicant's score sheet and report the failure to the Department within 24 hours of the test.
- j) Testers must ensure that the 2W/3W vehicle used for testing is 50 CC or greater.
- k) Only one rider is allowed on an RST Course during the RST and observers must be kept a safe distance away from the RST Course.
- l) All portions of the RST Test must be completed consecutively by the applicant. The applicant must complete the RST Test before another applicant is allowed to begin an RST Test on the same Course.
- m) Applicants must take the RST Test on a properly equipped and maintained vehicle that meets state requirements for insurance and motor vehicle registration.
- n) An applicant under 18 years of age must wear a helmet that meets the standards described in section 42-4-1502(4.5) C.R.S. while testing.
- o) An RST Tester must not administer more than one complete RST per day to an applicant.

- p) If an applicant fails an RST, the RST Tester must write "fail" and the date of the test on the back of the motorcycle permit with a permanent marker.
- q) RST Testers must not administer an RST or written knowledge test to a member of his/her immediately family, as defined in section 42-1-102(43.5), C.R.S. (2016).
- r) An RST administered by an RST Tester must be equivalent to testing administered by the Department.
- s) Testers must ensure that applicants who pass the 2W/3W RST receive a completion statement that reflects that it is for a 2W/3W vehicle.

(500) WRITTEN KNOWLEDGE TEST

- a) RST Testers administering the written knowledge test must issue the written knowledge completion statement (DR2439) to the applicant upon successful completion of the written knowledge test. The DR2439 form is valid for 30 days from the date of issue. Only certified RST Testers may sign this form.
- b) RST Testers administering written knowledge tests must:
 - 1. administer and proctor tests only at a location pre-approved by the Department;
 - 2. 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;
 - 3. require applicants to write their first and last name(s), date of birth, and the date of the test in the information box provided on the written knowledge test and interpreters, including an RST Tester acting as an interpreter, must write their first and last name(s) and driver license number on the back of the test;
 - 4. require a correct score of 80% or higher to pass;
 - 5. grade correctly using the score key and a red pen;
 - 6. provide up to 4 tests per applicant in total, and no more than 2 tests to an applicant per day. If an applicant fails 4 written tests, all subsequent tests must be taken at a Department driver's license office; and
 - 7. ensure that an applicant who fails a test is not administered the same version of the test in any subsequent attempt. 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.
- c) Applicants may use an interpreter for the written knowledge test. Any interpreter must be arranged for by the applicant and any cost associated with the use of an interpreter is the responsibility of the applicant.
- d) An interpreter must be at least 16 years old and show an unexpired driver's license from any state in the United States.
- e) The RST Tester or other interpreter can interpret in the required language and can only interpret the questions and answer choices.

- f) Written knowledge tests must not be used as “practice” or “pre” tests or for any other unauthorized purpose.
- g) Written knowledge tests may not be copied outside the physical facilities of the RSTO unless the written knowledge tests remain under the direct supervision and control of the RSTO.
- h) Written knowledge test completion statements must not be partially or fully completed until after a student has completed and passed the written knowledge test.
- i) RST Testers administering the written knowledge test must confirm upon renewal they have the most current version of tests/keys.
- j) Tests must be administered (including proctoring and grading) by an RST Tester with a certification to administer a written knowledge test.
- k) The RST Tester must correctly grade the written knowledge test. The RST Tester signing the DR2439 is responsible for the accurate grading of the test.
- l) Testers must ensure that the applicants who pass the 2W/3W written knowledge test receive a completion statement that reflects the correct type of vehicle.
- m) All written knowledge testing must be equivalent to examinations administered by the Department.

(600) RECORDS AND REPORTING REQUIREMENTS

- a) An RSTO must submit any monthly report required by the Department in an approved format. Such reports must be submitted electronically to the Department on or before the 10th day of each month for the previous month’s activity, even if there was no activity. Incomplete reports will not be accepted.
- b) Any voided control numbered forms must be logged on the monthly reports, filed in numeric order, and include a note explaining why the document was voided and the number of the replacement form. Any replacement forms must be dated using the same date as the original form.
- c) Records and documents must be filed and maintained at a single and secure location.
- d) All non-electronic records, including control numbered documents must be retained by the RSTO for 3 years, after which they must be shredded.
- e) All passed and failed written knowledge tests (DR2256), not administered in an electronic format, must be:
 - 1. logged on the monthly report;
 - 2. each DR2256 (if passed) must be stapled to the DR2439 and filed in numeric order; and
 - 3. each DR2256 (if failed) must be filed in chronological order by test date.
- f) All passed and failed RST Tests, not administered in an electronic format, must be:
 - 1. logged on the monthly report;

2. each DR2610 score sheet (if passed) must be stapled to the DR2713 and filed in numeric order; and
 3. each DR2610 (if failed) must be filed in chronological order by test date.
- g) Any control numbered forms must be accounted for and unused forms must be stored in a single and secure location.
 - h) Post-dating, pre-dating, or partial completion of any form is prohibited.

(700) AUDITING

- a) Audits may be conducted at the RSTO's office, the Department's office, or at another location as determined by the auditor.
- b) The Department will conduct audits as often as the Department deems necessary to review all required records. Records will be checked for accuracy and completeness, including, but not limited to, missing or voided records, and, in the case of control numbered documents, for numeric filing sequence.
- c) An RSTO must cooperate with the Department, including allowing access to testing areas, and supplying student names and testing records, results, and any other items requested by the Department.
- d) RSTO records must be accessible during the RSTO's normal business hours.
- e) RSTO records must be provided or made available to a Department representative upon request.
- f) An RSTO must receive a score of 80% or higher to pass an audit. Records management and/or continuing education will be required for an RSTO that fails an audit. Failing an audit will also result in a notice of a serious violation. Two or more audit failures may result in suspension or revocation of certifications.

(800) CERTIFICATION RENEWAL

- a) RSTO and RST Tester certifications are valid from July 1st through June 30th of the following year.
- b) RSTO and RST Tester certifications and contracts with the Department must be renewed annually.
- c) Renewal applications are due on June 1 of each year and must be received no later than June 30. The Department will not renew the certification of an RSTO whose application is received after June 30. The Department will not honor test completion forms issued by such RSTOs after June 30.
- d) Incomplete renewal applications will be returned to the RSTO submitting the application.
- e) An RSTO that fails to timely file a renewal application may be required to apply for a new RSTO certification as provided in section 200 of this Rule 9.
- f) An organization that fails to renew its RST certification(s) is no longer authorized to administer an RST, written knowledge test, or issue a completion form.

(900) 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 willful or negligent violations of any applicable statute, rule, or regulation, including but not limited to committing any of the following:
 - 1. Failure to return all copies of written knowledge tests and keys, certifications, and any control numbered documents within 10 days after cessation of business.
 - 2. Failure to file a monthly report on or before the 10th day of the month for the previous month.
 - 3. Failure to provide or allow the Department access to any record required to be maintained by statute, rule, or regulation; failure to allow the Department access to a testing area, or failure to cooperate in an audit.
 - 4. Failure to address and/or correct deficiencies found in a previous audit or failing 2 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.
 - 5. Providing false information to the Department.
 - 6. Improper, illegal, or fraudulent testing or improper, illegal, or fraudulent use of Department issued forms and/or completion statements.
 - 7. Omitting a test requirement from a written knowledge test or RST, or participating in any illegal activity related to licensing.
 - 8. Attaching a control numbered form to a blank score sheet or test.
 - 9. Failure to comply with any relevant statute, rule or regulation, contract obligation, or Department final order.
- b) The Department will provide information concerning illegal activity to the appropriate law enforcement authority.
- c) If an applicant's testing was improper, illegal, or fraudulent, the Department may cancel the applicant's motorcycle endorsement.
- d) Any certification may be summarily suspended if the Department has objective and reasonable grounds to believe and finds that a RSTO or RST Tester has deliberately and willfully violated applicable rules and regulations or state statutes, or that the public health, safety, or welfare requires emergency action.
- e) Upon notice of summary suspension, an RSTO and/or RST Tester must immediately cease all testing. The Department will promptly institute proceedings for suspension or revocation pursuant to the Administrative Procedures Act.

DEPARTMENT OF REVENUE

Division of Motor Vehicles

MOTORCYCLE RULES AND REGULATIONS FOR RST ORGANIZATIONS

1 CCR 204-30 RULE 9

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

PURPOSE

These rules establish the certification and operational requirements for the conduct of certified third party motorcycle rider skills testers.

STATUTORY AUTHORITY

Sections: 24-4-103; 42-1-102(43.5); 42-1-102(55); 42-1-102(58); 42-1-204; 42-1-222; 42-2-103; 42-2-106 and 42-2-111; 42-4-205; 42-4-232; 42-4-1502, C.R.S. (2016)

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- d) **Rider Skills Testing Certification (RST Certification):** A certification issued by the Department authorizing an individual or third party testing organization to administer Rider Skills Test and written knowledge tests to applicants seeking a motorcycle endorsement.
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 - j) Every RSTO owner and manager must complete "records management" training prior to certification.
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 - l) An RSTO must provide the Department with the RSTO's current physical and mailing addresses, a contact phone number, and the name of one contact person who is an employee or principal of the RSTO.
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 - iv. complete and pass all Department required training; and
 - v. be employed by an RSTO.
 2. An RST Tester need not be certified as a written knowledge tester in order to be an RST Tester, however, only an RST Tester so certified can administer written knowledge tests.
 3. An applicant for RST Tester certification, or his or her employer, is responsible for any fees or costs associated with RST training and certification.

4. All RST testers must complete Refresher Training every two years.
 5. All certifications expire on June 30th of each year.
- b) An RST Tester may be employed by more than one RSTO. An RST Tester employed by more than one RSTO will be issued a separate certification number for each RSTO employing the RST Tester. An RST Tester certification is valid only while the tester is employed by the RSTO listed on the certificate.
 - c) Testing must be consistent with RST Tester training and testers must use only score forms provided by the Department.
 - d) An RST Tester must comply with applicable Colorado revised statutes, rules and regulations, and Department final orders.
 - e) The Department may deny or revoke certification of an individual who has 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.
 1. 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.
 - f) An RST Tester must follow the Department's standards when administering an RST or written knowledge test.
 - g) The Department will issue a unique tester number to each RST Tester. RST Testers must use only their assigned number and must not authorize another person to use their number. Unauthorized use of an assigned number may result in revocation or suspension of the RST Tester's certifications.
 - h) An RST Tester must refer the following to a Colorado driver license office:
 1. an applicant requesting a written knowledge test after 4 failed attempts;
 2. an applicant with an invalid driver's license requesting any test; and
 3. an applicant unable to produce a valid photo ID.
 - i) An RST Tester cannot administer any RST test to a member of their immediate family. "Immediate family" is defined in section 42-1-102(43.5), C.R.S.

(300) RST COURSE SITE REQUIREMENTS

- a) An RSTO must ensure that its RST Course meets Departmental requirements for the RST.
- b) An RSTO must provide the Department a signed "Land Use Authorization" authorizing the RSTO to paint each RST Course and to administer RST Tests on the property.
- c) The "Land Use Authorization" for an RST Course must be filed with the Department before an RST Course will be approved.
- d) RST Courses must be approved by the Department prior to RST Testing.

- e) When in use, the RST Course surface must be safe, free from defects, and free from foreign matter including, but not limited to, debris, sand, gravel, water, ice, and snow.
- f) An RST Course that measures over 1/2 of an inch "out of standards" no longer meets Department requirements; RST Testing on that Course will be summarily suspended.
- g) All RST Course markings must be plainly visible and accurate.

(400) RST TESTING REQUIREMENTS

- a) An RSTO must allow the Department to conduct random inspections and audits of the organization's RST testing records, procedures, and RST Course(s).
- b) Prior to administering an RST, RST Testers must ensure that the applicant has a valid driver's license and a valid motorcycle instruction permit in his/her immediate possession.
- c) An RSTO must ensure that only certified RST Testers employed by the RSTO administer an RST on behalf of that RSTO.
- d) RST Testing must be done during daylight hours. For purposes of this rule, "daylight hours" means the period between one-half hour before sunrise and one-half hour after sunset as sunrise and sunset as reported by the Astronomical Applications Department, U.S. Navy, <http://www.aa.usno.mil>.
- e) RST Testing must be administered only on an RST Course that has been approved by the Department.
- f) An RSTO and RST Tester must ensure that all testing forms are completed correctly.
- g) RST completion statements must not be partially or fully completed until after an applicant has completed and passed the RST.
- h) An RST Tester's signature on a completion statement constitutes a representation by the Tester that the applicant whose name is on the completion statement, took and passed the RST.
- i) RST Testers must note all failures on the applicant's score sheet and report the failure to the Department within 24 hours of the test.
- j) Testers must ensure that the 2W/3W vehicle used for testing is 50 CC or greater.
- k) Only one rider is allowed on an RST Course during the RST and observers must be kept a safe distance away from the RST Course.
- l) All portions of the RST Test must be completed consecutively by the applicant. The applicant must complete the RST Test before another applicant is allowed to begin an RST Test on the same Course.
- m) Applicants must take the RST Test on a properly equipped and maintained vehicle that meets state requirements for insurance and motor vehicle registration.
- n) An applicant under 18 years of age must wear a helmet that meets the standards described in section 42-4-1502(4.5) C.R.S. while testing.
- o) An RST Tester must not administer more than one complete RST per day to an applicant.

- p) If an applicant fails an RST, the RST Tester must write "fail" and the date of the test on the back of the motorcycle permit with a permanent marker.
- q) RST Testers must not administer an RST or written knowledge test to a member of his/her immediately family, as defined in section 42-1-102(43.5), C.R.S. (2016)
- r) An RST administered by an RST Tester must be equivalent to testing administered by the Department.
- s) Testers must ensure that applicants who pass the 2W/3W RST receive a completion statement that reflects that it is for a 2W/3W vehicle.

(500) WRITTEN KNOWLEDGE TEST

- a) RST Testers administering the written knowledge test must issue the written knowledge completion statement (DR2439) to the applicant upon successful completion of the written knowledge test. The DR2439 form is valid for 30 days from the date of issue. Only certified RST Testers may sign this form.
- b) RST Testers administering written knowledge tests must:
 1. administer and proctor tests only at a location pre-approved by the Department;
 2. 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;
 3. require applicants to write their first and last name(s), date of birth, and the date of the test in the information box provided on the written knowledge test and interpreters, including an RST Tester acting as an interpreter, must write their first and last name(s) and driver license number on the back of the test;
 4. require a correct score of 80% or higher to pass;
 5. grade correctly using the score key and a red pen;
 6. provide up to 4 tests per applicant in total, and no more than 2 tests to an applicant per day. If an applicant fails 4 written tests, all subsequent tests must be taken at a Department driver's license office; and
 7. ensure that an applicant who fails a test is not administered the same version of the test in any subsequent attempt. 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.
- c) Applicants may use an interpreter for the written knowledge test. Any interpreter must be arranged for by the applicant and any cost associated with the use of an interpreter is the responsibility of the applicant.
- d) An interpreter must be at least 16 years old and show an unexpired driver's license from any state in the United States.
- e) The RST Tester or other interpreter can interpret in the required language and can only interpret the questions and answer choices.

- f) Written knowledge tests must not be used as “practice” or “pre” tests or for any other unauthorized purpose.
- g) Written knowledge tests may not be copied outside the physical facilities of the RSTO unless the written knowledge tests remain under the direct supervision and control of the RSTO.
- h) Written knowledge test completion statements must not be partially or fully completed until after a student has completed and passed the written knowledge test.
- i) RST Testers administering the written knowledge test must confirm upon renewal they have the most current version of tests/keys.
- j) Tests must be administered (including proctoring and grading) by an RST Tester with a certification to administer a written knowledge test.
- k) The RST Tester must correctly grade the written knowledge test. The RST Tester signing the DR2439 is responsible for the accurate grading of the test.
- l) Testers must ensure that the applicants who pass the 2W/3W written knowledge test receive a completion statement that reflects the correct type of vehicle.
- m) All written knowledge testing must be equivalent to examinations administered by the Department.

(600) RECORDS AND REPORTING REQUIREMENTS

- a) An RSTO must submit any monthly report required by the Department in an approved format. Such reports must be submitted electronically to the Department on or before the 10th day of each month for the previous month’s activity, even if there was no activity. Incomplete reports will not be accepted.
- b) Any voided control numbered forms must be logged on the monthly reports, filed in numeric order, and include a note explaining why the document was voided and the number of the replacement form. Any replacement forms must be dated using the same date as the original form.
- c) Records and documents must be filed and maintained at a single and secure location.
- d) All non-electronic records, including control numbered documents must be retained by the RSTO for 3 years, after which they must be shredded.
- e) All passed and failed written knowledge tests (DR2256), not administered in an electronic format, must be:
 - 1. logged on the monthly report;
 - 2. each DR2256 (if passed) must be stapled to the DR2439 and filed in numeric order; and
 - 3. each DR2256 (if failed) must be filed in chronological order by test date.
- f) All passed and failed RST Tests, not administered in an electronic format, must be:
 - 1. logged on the monthly report;

2. each DR2610 score sheet (if passed) must be stapled to the DR2713 and filed in numeric order; and
 3. each DR2610 (if failed) must be filed in chronological order by test date.
- g) Any control numbered forms must be accounted for and unused forms must be stored in a single and secure location.
 - h) Post-dating, pre-dating, or partial completion of any form is prohibited.

(700) AUDITING

- a) Audits may be conducted at the RSTO's office, the Department's office, or at another location as determined by the auditor.
- b) The Department will conduct audits as often as the Department deems necessary to review all required records. Records will be checked for accuracy and completeness, including, but not limited to, missing or voided records, and, in the case of control numbered documents, for numeric filing sequence.
- c) An RSTO must cooperate with the Department, including allowing access to testing areas, and supplying student names and testing records, results, and any other items requested by the Department.
- d) RSTO records must be accessible during the RSTO's normal business hours.
- e) RSTO records must be provided or made available to a Department representative upon request.
- f) An RSTO must receive a score of 80% or higher to pass an audit. Records management and/or continuing education will be required for an RSTO that fails an audit. Failing an audit will also result in a notice of a serious violation. Two or more audit failures may result in suspension or revocation of certifications.

(800) CERTIFICATION RENEWAL

- a) RSTO and RST Tester certifications are valid from July 1st through June 30th of the following year.
- b) RSTO and RST Tester certifications and contracts with the Department must be renewed annually.
- c) Renewal applications are due on June 1 of each year and must be received no later than June 30. The Department will not renew the certification of an RSTO whose application is received after June 30. The Department will not honor test completion forms issued by such RSTOs after June 30.
- d) Incomplete renewal applications will be returned to the RSTO submitting the application.
- e) An RSTO that fails to timely file a renewal application may be required to apply for a new RSTO certification as provided in section 200 of this Rule 9.
- f) An organization that fails to renew its RST certification(s) is no longer authorized to administer an RST, written knowledge test, or issue a completion form.

(900) 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 willful or negligent violations of any applicable statute, rule, or regulation, including but not limited to committing any of the following:
 - 1. Failure to return all copies of written knowledge tests and keys, certifications, and any control numbered documents within 10 days after cessation of business.
 - 2. Failure to file a monthly report on or before the 10th day of the month for the previous month.
 - 3. Failure to provide or allow the Department access to any record required to be maintained by statute, rule, or regulation; failure to allow the Department access to a testing area, or failure to cooperate in an audit.
 - 4. Failure to address and/or correct deficiencies found in a previous audit or failing 2 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.
 - 5. Providing false information to the Department.
 - 6. Improper, illegal, or fraudulent testing or improper, illegal, or fraudulent use of Department issued forms and/or completion statements.
 - 7. Omitting a test requirement from a written knowledge test or RST, or participating in any illegal activity related to licensing.
 - 8. Attaching a control numbered form to a blank score sheet or test.
 - 9. Failure to comply with any relevant statute, rule or regulation, contract obligation, or Department final order.
- b) The Department will provide information concerning illegal activity to the appropriate law enforcement authority.
- c) If an applicant's testing was improper, illegal, or fraudulent, the Department may cancel the applicant's motorcycle endorsement.
- d) Any certification may be summarily suspended if the Department has objective and reasonable grounds to believe and finds that a RSTO or RST Tester has deliberately and willfully violated applicable rules and regulations or state statutes, or that the public health, safety, or welfare requires emergency action.
- e) Upon notice of summary suspension, an RSTO and/or RST Tester must immediately cease all testing. The Department will promptly institute proceedings for suspension or revocation pursuant to the Administrative Procedures Act.

Notice of Proposed Rulemaking

Tracking number

2016-00436

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

GAMING REGULATIONS

Rulemaking Hearing**Date**

10/20/2016

Time

10:00 AM

Location

142 Lawrence St., Central City, CO 80427

Subjects and issues involved

Amendments to Rule 4 Rights and Duties of Licensees, and Rule 4.5 Publicly Traded Corporations and Public Offerings of Securities, for the sake of consistency and clarification and to make minor corrections. Regulation 47.1-411 is being moved from Rule 4 to Rule 10 Rules for Poker.

Statutory authority

Sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-301, C.R.S., 12-47.1-302, C.R.S., 12-47.1-503, C.R.S., 12-47.1-504, C.R.S., 12-47.1-511, C.R.S., 12-47.1-529, C.R.S., 12-47.1-801, C.R.S., 12-47.1-818, C.R.S., and 12-47.1-835, C.R.S.

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BASIS AND PURPOSE FOR RULE 4

The purpose of Rule 4 is to specify the rights, responsibilities, and duties of licensees; specify certain duties of licensees related to permitting access to the Division of information, records, and premises controlled by the licensee; require licensees to maintain sufficient financial reserves; establish restrictions on the use of skills and proposition players; **grant permission to use lammers;** require that certain information be publicly posted; direct the licensee to prohibit certain conduct; and establish procedures for patron disputes, dissolution of corporations, transfers of interests and terminations of licensee employment or licensure. The statutory basis for Rule 4 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-301, C.R.S., and 12-47.1-503, C.R.S., **12-47.1-511, C.R.S., 12-47.1-529, C.R.S., AND 12-47.1-835, C.R.S.**

RULE 4 RIGHTS AND DUTIES OF LICENSEES

47.1-402 Discovery of violations.

Each licensee must immediately notify the Division of the discovery of a violation or of a suspected violation of article 47.1 of title 12, C.R.S., or the rules and regulations promulgated thereunder **., OR ANY OTHER CRIMINAL VIOLATION.**

47.1-404 List of personnel.

Prior to opening for business, a retail licensee must furnish to the Director on a form, or other medium required by the Division, a list of all persons, **PERMANENTLY OR TEMPORARILY ON PROPERTY, LICENSED AND UNLICENSED,** including birth dates, employed by the retail licensee. Additionally, the retail licensee must by the first day of each month submit changes to its lists of employees, unless the Director, in writing, demands more frequent notification or allows less frequent notification. (amend perm 03/30/03)

47.1-405 Information to be furnished by licensee.

- (1) Reports and notices to the Division required by the Colorado Limited Gaming Act, or by the rules and regulations promulgated thereunder, must be made in writing, and must be submitted to the Division's main office in Golden, Colorado. -
- (b) Delivery of notice may be made by United States mail, by personal or commercial delivery to the office, by facsimile transmission, or by electronic mail. Facsimile transmissions shall be made to the telephone number provided by the Division. Electronic mail transmissions shall be directed to the electronic mail address provided by the Division, or when available, by use of forms submitted from the Division's internet **WEB**site. (47.1-405(l) perm. 10/30/99)

47.1-407 Access to premises and production of records.

No applicant or licensee, or applicant or licensee's employee or agent may neglect or refuse to produce records or evidence or to give information on lawful demand by the Commission, **Director, or any investigator or agent of OR** the Division. No applicant or licensee shall interfere or attempt to interfere with lawful efforts by the Commission, **Division, or any of its agents OR DIVISION** to obtain or produce such information.

47.1-409 Support **AND KEY licensee identification.**

47.1-411 Use of lammers.

(1) In poker games only, a licensee may use lammers instead of a poker buy form when chips are distributed to the table from the cashier. When lammers are used, the dealer must advise the dealer's supervisor that chips are needed and must ask for a specific amount of chips. The supervisor must obtain the necessary combination of lammers to signify numerically the requested transfer. The lammers must remain in a conspicuous place on the table. After receipt of the lammers, the dealer must remove from the dealer's imprest bank the necessary currency to receive the requested amount of chips. The supervisor must take the currency to the cashier and obtain the desired numbers of chips in return for the currency. The supervisor must immediately return to the table with the chips and give them to the dealer who will check the amount of chips for accuracy. The supervisor must then retrieve the lammers. Lammers must be kept in a secure place accessible only to the persons who supervise the dealers.

(2) Licensees may establish imprest banks at a supervisor's podium or cashier podium in their poker rooms for the purpose of supplying chips and tokens to the tables in the room which offer player-banked poker games. Such podium imprest banks must be maintained using the procedures for tables described in Rule 11. Where poker room podium imprest banks are in use, an even money transfer of cash from a poker table may be made for chips and tokens from the podium bank, without the necessity of using lammers. (47.1-411(2) amended perm. 09/30/00)

(FORMER REGULATION 47.1-411 WAS RELOCATED TO REGULATION 47.1-1001 (4) THROUGH (5).

47.1-412 Payment of Wwinners - RReserves.

All retail licensees shall at all times have available sufficient financial reserves to promptly to pay winners of, or participants in, limited gaming activities conducted or offered by that retail licensee. Payment must be made to winners and participants by cash or by check drawn upon a bank, or other financial institution in Colorado, chartered by the State of Colorado or any other state or the United States Government, within 24 hours of any bona-fide demand by a winner or participant for payment. Any check issued by a retail licensee to any winner of a limited gaming activity must, at the time of issuance and until cashed or three months has expired (whichever is earlier), be backed by and drawn upon sufficient funds to cover the full amount of the check.

47.1-414 Player rules.

A retail licensee must post the following rules on the licensed areas:

(4) It is unlawful to claim unattended or unearned credits and money on gaming devices; and

(5) It is unlawful to participate in limited gaming activities while intoxicated; AND

47.1-415 Visibly IIntoxicated persons.

47.1-417 Patron disputes.

In a patron dispute, a licensee must notify the disputing patron that the patron has a right to contact the Division regarding the dispute.

If a licensee refuses payment of alleged winnings to a patron, the licensee and the patron are unable to resolve the dispute to the patron's satisfaction, or the dispute involves at least \$250, the licensee must immediately notify the Division. The Director shall conduct whatever investigation is necessary and must determine whether or not payment should be made. An agent of the Division may investigate the dispute and may report either to the Commission or to the Director for a decision.

The Director must notify the licensee and the patron in writing of the Director's decision regarding the dispute, within ~~five~~TEN business days after the completion of the investigation.

Failure immediately to notify the ~~Director~~DIVISION of a dispute, or to notify a patron of the patron's rights or failure to pay after an adverse decision, is a violation by the licensee.

47.1-419 Procedure upon dissolution.

Upon dissolution of a corporation, partnership, or association, the licensee must ~~return~~SURRENDER the license to the Commission within 10 days following the date of the dissolution.

47.1-421 Termination of qualifying licensee, manager, or agent.

Upon the termination of a manager's or agent's affiliation with the licensee, the licensee must name one or more new managers or agents, INCLUDING TEMPORARY APPOINTMENTS UNTIL A PERMANENT APPOINTMENT IS MADE, and notify the Division within seven days.

47.1-423 Post-termination matters.

Upon termination of a retail or operator license for any reason, no further gaming activity shall be conducted by said licensee or on the previously licensed premises. After such termination, at a date designated by the Director, said licensee shall SUBMIT TO THE DIVISION ~~appear before the Director for the purpose of rendering~~ a final accounting and ~~to~~ surrender the license.

47.1-428 Acceptance of ~~T~~tips.

BASIS AND PURPOSE FOR RULE 4.5

The purpose of Rule 4.5 is to establish specific reporting procedures and approval requirements for transfers of interests and other involvement with publicly traded corporations directly or indirectly involved in gaming in Colorado. The statutory basis for Rule 4.5 is found in sections 12-47.1-201, C.R.S. 12-47.1-203, C.R.S. 12-47.1-302, C.R.S. 12-47.1-504, C.R.S. 12-47.1-511, C.R.S. and 12-47.1-801, C.R.S. ~~(1991).~~

RULE 4.5 PUBLICLY TRADED CORPORATIONS AND PUBLIC OFFERINGS OF SECURITIES

47.1-4.501 Definitions.

As used in this Rule 4.5, the following terms shall have the meaning ascribed to them herein:

- (1) "Affiliated company" means a subsidiary company, holding company, intermediary company or any other form of business organization that IS RELATED IN SOME MANNER TO THE LICENSEE AND:
 - (a.) Controls, is controlled by or is under common control directly or indirectly with a licensee; and/or
 - (b.) Is involved in gaming activities in this state or involved in the ownership of property in this state upon which gaming is conducted.
- (3) "Holding company" means any corporation, firm, partnership, trust, limited liability company or other form of business organization not a natural person which, directly or indirectly:

- (a-) Owns;
- (b-) Has the power or right to control; or
- (c-) Holds with power to vote,

(4) "Institutional investor" means:

- (f) An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a licensed or an intermediary or holding company licensee which directly or indirectly owns five percent or more of a licensee-;
- (g) A state or federal government pension plan-; AND
- (h) A group comprised entirely of persons specified in (a) through (g) of this definition.

(5) "Intermediary company" means any corporation, firm, partnership, trust, limited liability company or other form of business organization other than a natural person which:

- (a-) Is a holding company with respect to a business entity which holds or applies for a state gaming license; and
- (b-) Is a subsidiary with respect to any holding company.

(7) (a) "Publicly traded corporation" means:

- (iA) Any corporation, firm, partnership, trust, limited liability company or other form of business organization not a natural person which:
 - (Ai) Has one or more classes of voting securities registered pursuant to section 12 of the 1934 Act; or
 - (Bii) Is an issuer subject to section 15(d) of the 1934 Act; or
 - (Ciii) Has one or more classes of voting securities exempted from the registration requirements of section 5 of the 1933 Act, solely by reason of an exemption contained in section 3(a) (10), 3(a) (11) or 3(c) of the 1933 Act.
- (iiB) Any corporation, firm, partnership, trust, limited liability company or other form of business organization created under the laws of a foreign country:
 - (Ai) Which has one or more classes of voting securities registered on that country's securities exchange or over-the-counter market; and
 - (Bii) Whose activities have been found by the Commission to be regulated in a manner which protects the investors and the State of Colorado.
- (bc) The term "publicly traded corporation" does not include any corporation, firm, partnership, trust, limited liability company or other form of business organization not a natural person which has securities registered or is an issuer pursuant to subparagraph (ai) of this definition solely because it:

- (ii) Is considered by the SEC to be a co-issuer of a public offering of securities pursuant to Rule 140 under the 1933 Act.
- (9) "Subsidiary" means any firm, partnership, trust, limited liability company or other form of business organization not a natural person, all or any interest in which is:
 - (iA) Owned;
 - (iiB) Subject to a power or right of control; or
 - (iiiC) Held with power to vote directly, indirectly or in conjunction with a holding company or intermediary company.
- (910) "Voting security" means a security the holder of which is entitled to vote generally for the election of a member or members of the board of directors or board of trustees of a corporation or a comparable person or persons in the case of a partnership, trust or other form of business organization other than a corporation.

47.1-4.502 Application of Rule.

In addition to all other requirements of the Colorado Gaming Regulations, this Rule 4.5 shall impose additional requirements on publicly traded corporations holding gaming licenses in the state, and gaming licensees in the state owned directly or indirectly by a publicly traded corporation, whether through a subsidiary or intermediary company. These requirements shall automatically apply to any ownership interest held by a publicly traded corporation, holding company or intermediary company thereof, where such ownership interest directly or indirectly is, or will be upon approval by the Commission, **5FIVE** percent or more of the entire licensee. In any event, if the Commission determines that a publicly traded corporation, or a subsidiary, intermediary company or holding company thereof has the actual ability to exercise influence over a licensee, regardless of the percentage of ownership possessed by said entity, the Commission may require that entity to comply with the regulations contained in this Rule 4.5. Should any requirement in this Rule 4.5 conflict with any other regulation in the Colorado Gaming Regulations, this Rule 4.5 shall apply.

47.1-4.503 Public **Oofferings.**

- (2) If the licensee, affiliated company or a controlling person thereof intending to issue the voting securities is a publicly traded corporation, and if the proceeds of the offering, in whole or in part, are intended to be used:
 - (a-) To pay for construction of gaming facilities in Colorado to be owned or operated by the licensee;
 - (b-) To acquire any direct or indirect interest in gaming facilities in Colorado;
 - (c-) To finance the operation by the licensee of gaming facilities in Colorado; or
 - (d-) To retire or extend obligations incurred for one or more purposes set forth in subsection a, b or c of this regulation.

47.1-4.504 Notification of **Public **O**ffering.**

A person notifying the Commission of a public offering pursuant to this Rule 4.5 shall, to the extent practical, disclose the following information:

- (1) A description of the voting securities to be offered.
- (2) The proposed terms upon which the voting securities are to be offered.
- (3) The anticipated gross and net proceeds of the offering, (Including a detailed list of expenses).
- (4) The use of proceeds.
- (5) The name and address of the lead underwriter.
- (6) The forms of the underwriting agreement, the agreement among underwriters, if any, and the selected dealers agreements, if any.
- (7) A statement of intended compliance with all applicable federal, state, local and foreign securities laws.
- (8) The names and addresses of the applicant's counsel for such public offering, independent auditors, and special consultants on the offering.
- (9) If any voting securities to be issued are not to be offered to the general public, the general nature of the offerees and the form of the offering. AND
- (10) Any other offering material filed with the SEC which is required to be submitted pursuant to the direction of the Division or Commission.

47.1-4.505 Fraudulent and Deceptive Practices Prohibited.

47.1-4.506 Submission of Proxy and Information Statements.

47.1-4.507 Reporting Requirements.

- (1) Whenever any filing on Form 10-Q, Form 10-K, Form 8-K, Form 1-A, Registration Statement SB-2, Registration Statement 10-SB, Report 10-KSB, Report 10-QSB, Schedule 13e-3 or Schedule 14D-9 or required by Rule 14f-I promulgated pursuant to the 1934 Act is filed with the SEC or with any national or regional securities exchange by a publicly traded corporation which is licensed as an operator, retailer, associated equipment supplier, or slot machine manufacturer or distributor under the Act, such publicly traded corporation shall, within 5 business days after the filing with the SEC, electronically notify the Division that such filing has taken place. (amended perm. 11/30/03)
- (2) Whenever a publicly traded corporation which is licensed as an operator, retailer, associated equipment supplier, or slot machine manufacturer or distributor under the Act receives any material document filed with the SEC by any other person relating to such publicly traded corporation, it shall, within 10 days following such receipt, electronically notify the Division that such document receipt has occurred. (amended perm. 11/30/03) Page 19-05

47.1-4.508 Required Charter Provisions.

47.1-4.509 Suitability Requirements.

- (1) Each person (including an institutional investor) who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of (i) ~~5FIVE~~ percent or more of any class of voting securities of a publicly traded corporation which is required to contain the charter provisions set forth in this Rule 4.5, or (ii) ~~5FIVE~~ percent or more of the beneficial interest in a licensee directly or indirectly through any class of voting securities of any holding company or intermediary company of a licensee, shall notify the Division within ten (10) days after such person acquires such securities and shall provide such additional information and be subject to a finding of suitability as required by the Division or Commission. A licensee shall notify each person who is subject to this regulation of its requirements as soon as such corporation becomes aware of the acquisition; provided that the obligations of the person subject to this regulation are independent of, and unaffected by, such corporation's failure to give such notice.
- (2) Each person (other than an institutional investor which complies with subsection (4) below) who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of (i) ~~10TEN~~ percent or more of any class of voting securities of a publicly traded corporation which is required to contain the charter provisions set forth in this Rule 4.5, or (ii) ~~10TEN~~ percent or more of the beneficial interest in a licensee directly or indirectly through any class of voting securities of any holding company or intermediary company of a licensee, must apply to the Commission for a finding of suitability within forty-five (45) days after acquiring such securities. A licensee shall notify each person who is subject to this regulation of its requirements as soon as such corporation becomes aware of the acquisition; provided that the obligations of the person subject to this regulation are independent of, and unaffected by, such corporation's failure to give such notice.
- (3) Each institutional investor who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of (i) ~~15TWENTY~~ percent or more of any class of voting securities of a publicly traded corporation which is required to contain the charter provisions set forth in this Rule 4.5, or (ii) ~~15TWENTY~~ percent or more of the beneficial interest in a licensee directly or indirectly, through any class of voting securities of any holding company or intermediary company of a licensee, must apply to the Commission for a finding of suitability within forty-five (45) days after acquiring such securities. A licensee shall notify each person who is subject to this regulation of its requirements; provided that the obligations of the person subject to this regulation are independent of, and unaffected by, such corporation's failure to give such notice.
- (4)
 - (a) An institutional investor which otherwise would be subject to subsection (2) of this regulation must, within forty-five (45) days after acquiring the interests set forth in subsection (2), submit to the Division the following information:
 - (i) A description of the institutional investor's business and a statement as to why the institutional investor is within the definition of "institutional investor" as set forth in this regulation.
 - (ii) A certification made under oath and the penalty of perjury that the voting securities were acquired and are held for investment purposes only and were acquired and are held in the ordinary course of business as an institutional investor and not for the purposes of causing, directly or indirectly, the election of a majority of the board of directors, any change in the corporate charter, bylaws,

management, policies, or operations of a licensee or affiliated company. The signatory also shall explain the basis of his authority to sign the certification and to bind the institutional investor to its terms. The certification also shall provide that the institutional investor is bound by and shall comply with the Colorado Limited Gaming Act and the regulations adopted thereunder, is subject to the jurisdiction of the courts of Colorado, and consents to Colorado as the choice of forum in the event any dispute, question, or controversy arises regarding the application this regulation.

- (iii) The name, address, telephone number and social security number of the officers and directors, or their equivalent, of the institutional investor as well as those persons that have direct control over the institutional investor's holdings of voting securities of the licensee or affiliated company.
 - (iv) The name, address, telephone number and social security or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the licensee or affiliated company.
 - (v) The name of each person that beneficially owns 5 FIVE percent or more of the institutional investor's voting securities or other equivalent.
 - (vi) A list of the institutional investor's affiliates.
 - (vii) A list of all securities of the licensee that are or were, directly or indirectly, beneficially owned by the institutional investor or its affiliates within the preceding year, setting forth a description of the securities, their amount, and the date of acquisition or sale.
 - (viii) A list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the licensee or affiliated company files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor.
 - (ix) A disclosure of all criminal or regulatory sanctions imposed during the preceding ten (10) years and of any administrative or court proceedings filed by any regulatory agency during the preceding five (5) years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding twelve (12) months. As to a former officer or director, such information need be provided only to the extent that it relates to actions arising out of or during such person's tenure with the institutional investor or its affiliates.
 - (x) A copy of any filing made under 16 U.S.C. § 18a with respect to the acquisition or proposed acquisition of voting securities of the licensee or affiliated company.
AND
 - (xi) Any additional information the Division or the Commission may request.
- (b) The following activities shall not be deemed to be inconsistent with holding voting securities for investment purposes only pursuant to (a) (ii) of this regulation:

47.1-4.511 Prescribed Activities with Respect to “Unsuitable” THE FINDING OF UNSUITABILITY REGARDING Persons.

- (1) In refusing to grant approval for the transfer of an interest or other involvement with a licensee, the Commission **OR DIVISION** may determine that an individual or person is unsuitable. In reviewing an application for licensure, the Commission **OR DIVISION** may determine that an individual or person is unsuitable.
- (2) The Commission **OR DIVISION** may determine a licensee or affiliated company thereof to be unsuitable, or take other disciplinary action, if the licensee or affiliated company thereof, after the Commission **OR DIVISION** serves notice to the licensee or affiliated company thereof, that a person is unsuitable to be a stockholder or to have any other direct or indirect relationship or involvement with such licensee or affiliated company thereof:

47.1-4.513 Effective Date.

47.1-4.514 Definition of ownership interest.

- (1) For purposes of Section 12-47.1-808, C.R.S., a person shall not be deemed to have an “ownership interest” in a retail licensee because (a) such person has less than a five percent **(5%)** ownership interest in an institutional investor, which institutional investor has an ownership interest in a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee, (b) such person has five percent **(5%)** or more of an ownership interest in an institutional investor, which institutional investor has less than a five percent **(5%)** ownership interest in a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee, (c) such person is an institutional investor which has less than a five percent **(5%)** ownership interest in a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee, (d) such person is an institutional investor and possesses voting securities of a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee in a fiduciary capacity and not for its own account (unless such person exercises voting rights with respect to five percent **(5%)** or more of such publicly traded company's outstanding voting securities), (e) such person is a broker or dealer registered under the 1934 Act and possesses voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee for the benefit of customers and not for such person's own account and does not exercise voting rights with respect to five percent **(5%)** or more of such publicly traded company's voting securities, (f) such person is a broker or dealer registered under the 1934 Act and has an ownership interest in voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee as a market maker in such voting securities (unless such person exercises voting rights with respect to five percent **(5%)** or more of such outstanding voting securities), (g) such person is an underwriter of voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee and has an interest in such voting securities during the course of an underwriting (unless such person exercises voting rights with respect to five percent **(5%)** or more of such publicly traded company's outstanding voting securities), but no longer than 90 days after the beginning of such underwriting, or (h) such person possesses voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee in such person's capacity as a book-entry transfer facility (unless such person exercises voting rights with respect to five percent **(5%)** or more of such publicly traded company's outstanding voting securities). For the purpose of this Rule 47.1-4.514(1), a person shall be considered an institutional investor, whether or not such person is a

“qualified institutional buyer” as defined by Rule 144A under the 1933 Act, as long as such person otherwise qualifies as an “institutional investor” as defined in Rule 47.1-4.501(4).

- (2) For purposes of Section 12-47.1-808, C.R.S., a person shall not be deemed to have an “ownership interest” in a retail licensee if such person's sole ownership interest in such retail licensee is through the ownership of less than five percent ~~(5%)~~ of the voting securities of (a) such retail licensee if such retail licensee is publicly traded, or (b) a publicly traded affiliated company of such retail licensee.
- (3) For purposes of Section 12-47.1-835, C.R.S., a person shall not be deemed to have a “substantial interest” in a manufacturer, distributor, operator, associated equipment supplier, or retailer licensee if such person's sole ownership interest in such licensee is through the ownership of less than five percent ~~(5%)~~ of the voting securities of (a) such licensee if such licensee is publicly traded, or (b) a publicly traded affiliated company of such licensee (unless such person exercises voting rights with respect to five percent ~~(5%)~~ or more of such publicly traded company's outstanding voting securities).

47.1-4.515 Definition of interest.

For purposes of Section 12-47.1-401, C.R.S., a person shall not be deemed to have an “interest” in a licensee because (a) such person has less than a five percent ~~(5%)~~ ownership interest in an institutional investor, which institutional investor has an ownership interest in a publicly traded licensee or in a publicly traded affiliated company of a licensee, or (b) such person has five percent ~~(5%)~~ or more of an ownership interest in an institutional investor, which institutional investor has less than a five percent ~~(5%)~~ ownership interest in a publicly traded licensee or in a publicly traded affiliated company of a licensee. For purposes of this Rule 47.1-4.515, a person shall be considered an institutional investor, whether or not such person is a “qualified institutional buyer” as defined by Rule 144A under the 1933 Act, as long as such person otherwise qualifies as an “institutional investor” as defined in Rule 47.1-4.501(4).

BASIS AND PURPOSE FOR RULE 10

The purpose of Rule 10 is to establish playing rules for authorized types of poker and management procedures for conducting poker games in compliance with section 12-47.1-302 (2), C.R.S. The statutory basis for Rule 10 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and 12-47.1-818, C.R.S.

RULE 10 RULES FOR POKER

47.1-1001 Poker ~~R~~Rules

- (4) IN POKER GAMES ONLY, A LICENSEE MAY USE LAMMERS INSTEAD OF A POKER BUY FORM WHEN CHIPS ARE DISTRIBUTED TO THE TABLE FROM THE CASHIER. WHEN LAMMERS ARE USED, THE DEALER MUST ADVISE THE DEALER'S SUPERVISOR THAT CHIPS ARE NEEDED AND MUST ASK FOR A SPECIFIC AMOUNT OF CHIPS. THE SUPERVISOR MUST OBTAIN THE NECESSARY COMBINATION OF LAMMERS TO SIGNIFY NUMERICALLY THE REQUESTED TRANSFER. THE LAMMERS MUST REMAIN IN A CONSPICUOUS PLACE ON THE TABLE. AFTER RECEIPT OF THE LAMMERS, THE DEALER MUST REMOVE FROM THE DEALER'S IMPREST BANK THE NECESSARY CURRENCY TO RECEIVE THE REQUESTED AMOUNT OF CHIPS. THE SUPERVISOR MUST TAKE THE CURRENCY TO THE CASHIER AND OBTAIN THE DESIRED NUMBERS OF CHIPS IN RETURN FOR THE CURRENCY. THE SUPERVISOR MUST IMMEDIATELY RETURN TO THE TABLE WITH THE CHIPS AND GIVE THEM TO THE DEALER WHO WILL CHECK

THE AMOUNT OF CHIPS FOR ACCURACY. THE SUPERVISOR MUST THEN RETRIEVE THE LAMMERS. LAMMERS MUST BE KEPT IN A SECURE PLACE ACCESSIBLE ONLY TO THE PERSONS WHO SUPERVISE THE DEALERS. (FORMERLY REGULATION 47.1-411(1))

- (5) LICENSEES MAY ESTABLISH IMPREST BANKS AT A SUPERVISOR'S PODIUM OR CASHIER PODIUM IN THEIR POKER ROOMS FOR THE PURPOSE OF SUPPLYING CHIPS AND TOKENS TO THE TABLES IN THE ROOM WHICH OFFER PLAYER-BANKED POKER GAMES. SUCH PODIUM IMPREST BANKS MUST BE MAINTAINED USING THE PROCEDURES FOR TABLES DESCRIBED IN RULE 11. WHERE POKER ROOM PODIUM IMPREST BANKS ARE IN USE, AN EVEN MONEY TRANSFER OF CASH FROM A POKER TABLE MAY BE MADE FOR CHIPS AND TOKENS FROM THE PODIUM BANK, WITHOUT THE NECESSITY OF USING LAMMERS. (FORMERLY REGULATION 47.1-411(2), 47.1-411(2))
AMENDED PERM. 09/30/00)

Notice of Proposed Rulemaking

Tracking number

2016-00463

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-2

Rule title

CORPORATE ISSUES

Rulemaking Hearing**Date**

10/17/2016

Time

02:30 PM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

2-3-1 CONCERNING THE FORMATION AND OPERATIONS OF CAPTIVE INSURANCE COMPANIES IN COLORADO

The purpose of this regulation is to set forth the formation, operation and reporting requirements for captive insurance companies formed pursuant to the Colorado Captive Insurance Company Act, Article 6 of Title 10, C.R.S., and to ensure that licensed captive insurance companies are financially sound.

Statutory authority

10-1-109, and 10-6-129

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-2

CORPORATE ISSUES

~~Repealed and Repromulgated in Full~~ Proposed Amended Regulation 2-3-1

CONCERNING THE FORMATION AND OPERATIONS OF CAPTIVE INSURANCE COMPANIES IN COLORADO

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Filing Requirements
Section 5	Plan of Operation
Section 6	Feasibility Study
Section 7	Admitted Assets
Section 8	Reinsurance
Section 9	Discounting of Loss Reserves
Section 10	Examinations
Section 11	Severability
Section 12	Enforcement
Section 13	Effective Date
Section 14	History

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, and 10-6-129, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth the formation, operation and reporting requirements for captive insurance companies formed pursuant to the Colorado Captive Insurance Company Act, Article 6 of Title 10, C.R.S., and to ensure that licensed captive insurance companies are financially sound.

Section 3 Applicability

This regulation shall apply to any person that currently has, or is seeking to obtain, a certificate of authority to transact the business of insurance as a captive insurance company.

Section 4 Filing Requirements

A. Initial Application

1. All initial applications shall include the following documents in addition to the documents required in §§ 10-6-107(1) and 10-6-107(3), C.R.S.:
 - a. A complete UCAA primary application;

- b. A copy of the proposed bylaws or other internal operating instructions;
 - c. Three (3) years of audited financial reports on any party owning or controlling ten percent (10%) or more of the voting stock, or other controlling interest, of the captive insurance company; and
 - d. The identification of the certified public accountant pursuant to Colorado Insurance Regulation 3-1-4(3 CCR 702-3), the qualified actuary as defined in Colorado Insurance Regulation 1-1-1 (3 CCR 702-1) and any managing general agent or reinsurance intermediary to be used.
2. All applicants intending to operate as a risk retention group shall also include information sufficient to demonstrate compliance with Colorado Insurance Regulation 2-1-8 (3 CCR 702-2)

B. Annual Reports

1. All group captives shall file the following documents in addition to filing the information required by §§ 10-3-208(3) to 10-3-208(7), C.R.S. Unless otherwise indicated, the filings are due on the dates set by the Commissioner in the published annual filing instructions:
- a. A certification by an officer of the captive insurance company that it maintains its principal and home office in the State of Colorado, and that such office performs a significant portion of the insurance services necessary to manage and administer the captive insurance company operations, including maintaining the original books and records in the State of Colorado. This certification is due March 1st;
 - b. An actuarial opinion in accordance with Colorado Insurance Regulation 3-1-3 (3 CCR 702-3);
 - c. An actuarial report supporting the actuarial opinion. The actuarial report is due April 1st;
 - d. Management Discussion and Analysis ;
 - e. An audited CPA financial statement prepared in accordance with Colorado Insurance Regulation 3-1-4 (3 CCR 702-3);
 - f. Financial Statement Supplements; and
 - g. Quarterly Financial Statements.
2. All pure captives shall file the following documents:
- a. Annual financial information which includes a jurat page, balance sheet, and an income statement in the NAIC blank format. This requirement may be met by filing the audited CPA financial statement prepared in accordance with Colorado Insurance Regulation 3-1-4(3 CCR 702-3) with an affidavit by the pure captive's president, treasurer, and secretary affirming that the information in the financial statement is true and correct to the best of their knowledge. This report is due within sixty (60) days of the captive's fiscal year end;
 - b. A certification by an officer of the captive insurance company that it maintains its principal and home office in the State of Colorado, and that such office performs the insurance services necessary to manage and administer the captive insurance

company's operations, including maintaining the original books and records in the State of Colorado. This certificate is due within sixty (60) days of the captive's fiscal year end;

- c. An actuarial opinion prepared in accordance with Colorado Insurance Regulation 3-1-3 (3 CCR 702-3). The actuarial opinion is due within sixty (60) days of the captive's fiscal year end;
 - d. An actuarial report supporting the actuarial opinion. The actuarial report is due within ninety (90) days of the captive's fiscal year end; and
 - e. An audited CPA financial statement prepared in accordance with Colorado Insurance Regulation 3-1-4 (3 CCR 702-3). The audited financial statement is due within one hundred fifty (150) days of the captive's fiscal year end.
3. A pure captive that issues surety coverage, or a pure captive whose financial statement reflects a loan to or receivables from the parent company that exceeds fifty percent of the captive's statutory capital and surplus, shall file a copy of the parent company's audited financial statement. This audited financial statement is due within one hundred fifty (150) days of the captive's fiscal year end.

Section 5 Plan of Operation

- A. The plan of operation filed with the Commissioner for review and approval shall provide the basis and limitations for the captive insurance company's operations. Any licensed captive insurance company shall operate within its approved plan of operation. Each plan of operation shall contain the details of the captive insurance company's proposed operations, including but not limited to the following:
- 1. An organizational chart which includes the proposed captive insurance company and affiliated companies or group members as defined in § 10-6-103, C.R.S.;
 - 2. The identity of all officers and directors and owners of ten percent (10%) or more of the outstanding voting securities, or other means of direct or indirect control, of the captive insurance company, accompanied by biographical affidavits on the form prescribed by the Commissioner. The Commissioner may require a fingerprint set from any officer, director or owner;
 - 3. Proposed contractual agreements with, and identification of, managers, administrators, claims service providers, investment advisors, custodian, or others who will furnish services or insurance expertise to the captive. Any agreement concerning essential insurance services to the captive insurance company must provide for ninety (90) days advance notice to the Commissioner prior to termination and that the captive insurance company retains full ownership of all original records. Where services are routinely provided by a parent, affiliated company, or group member, a service agreement must be executed;
 - 4. The location(s) of all books, records and offices, including description of the functions to be performed at each office and how compliance with §10-6-107(5), C.R.S. is achieved;
 - 5. For pure captives, the identification of the fiscal year of the parent company and the captive (this may be the calendar year or the same fiscal year as the parent);
 - 6. The method, plan, timing, source and amount of the proposed initial capitalization. All risk retention group captives shall maintain capital levels in compliance with Colorado Insurance Regulation 3-1-11 (3 CCR 702-3). Group captives shall maintain capital levels at such

amounts as the Commissioner deems appropriate considering the risks to be insured, the amount of risk retained and other relevant factors;

7. For a pure captive, whether or not loans to the parent are anticipated. Any loan shall conform to Section 7 of this regulation;
 8. Information on how the captive funds are protected;
 9. A description of the type and form of risks to be written;
 10. Copies of all insurance contract forms;
 11. Copies of any advertising or marketing material intended for use;
 12. A description of pricing or funding methods to be employed if not provided elsewhere;
 13. For group captives, a description of the proposed underwriting standards and claims handling procedures;
 14. Disclosure of the maximum limits proposed to be written on any one risk, including any other solvency safeguards provided, in the event of adverse experience; and
 15. The identification of proposed reinsurers and a summary of the reinsurance program structure and arrangements. Draft copies of all reinsurance agreements anticipated to be used, including facultative contracts, shall be filed. Captive insurance companies, including risk retention groups, may take credit for reinsurance without prior written approval of the Commissioner if the reinsurer is authorized to transact reinsurance business in Colorado and the reinsurance agreement complies with §10-3-~~418~~ 701 et. seq., C.R.S. and **Colorado** Insurance Regulation 3-3-3 (3 CCR 702-3). Captive insurance companies, with the exception of risk retention groups, may take credit for non-complying reinsurance with approval by the Commissioner.
- B. A captive insurance company may modify the approved plan of operation with prior written approval of the Commissioner. A new feasibility study may be required. If the change results in an amendment to the certificate of authority, the previously issued certificate must be returned with a completed UCAA corporate amendments application for an amended certificate of authority.

Section 6 Feasibility Study

As used in this regulation, a feasibility study is an analysis of the anticipated operations of the captive insurance company, accompanied by a report and opinion of a qualified actuary, stating that the proposed operations are anticipated to be financially sound under expected and adverse experience. The actuary shall also issue an opinion on the adequacy of the proposed capitalization and funding levels or pricing structures for the anticipated risks to be written. The actuarial report must incorporate at a minimum the applicable information contained in the submitted plan of operation and the historical and expected loss experience of the initial insureds, the credibility of such data in determining reserves, and the disclosure of any other experience of similar exposures used to provide credible loss projections. The methods and assumptions used in the feasibility study and pro forma projections are for illustrative purposes only and are not to be considered as approved methods or assumptions unless specifically requested in the plan of operation and approved by the Commissioner.

Section 7 Admitted Assets

- A. A letter of credit may be reported as an admitted asset only if it is held by, or under joint control with, the Commissioner; names the Commissioner as beneficiary; has been filed and approved in

the plan of operation; is used to fund capital or surplus required or permitted by the Commissioner; and meets the three following provisions. The captive, or other person responsible for reimbursing the issuer of the letter of credit, shall disclose any collateral supporting the reimbursement obligation under the letter of credit in the event of a draw, which must not include assets of the captive, or submit an affidavit that reimbursement is not supported by assets of the captive insurance company.

1. The letter of credit must be clean, irrevocable, and unconditional. Such letter of credit shall be issued by, or confirmed by, and drawn upon a Qualified United States financial institution as defined by §10-1-102(17), C.R.S. The letter of credit shall contain an issue date and date of expiration; shall stipulate that the Commissioner or representative need only draw a sight draft under the letter of credit and present it to obtain funds; and that no other document need be presented, other than the letter of credit, if required;
 2. The letter of credit must not contain a statement that the obligation of the issuer under the letter of credit is contingent upon reimbursement; and
 3. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which automatically renews it unless at least ninety (90) days notice has been given to the Commissioner that the letter of credit will not be renewed at its expiration date.
- B. Pure captive insurance companies may report loans to their parent as admitted assets on their financial statements subject to the following:
1. The reported asset value for such loan must be within the maximum aggregate limit filed and approved in the plan of operation; and
 - a. the recipient of the loan has current assets exceeding its current liabilities, with the loan being reflected as a current liability on a non-consolidated basis with the captive; and
 - b. the audit opinion on the financial statement of the recipient of the loan is unqualified; and
 - c. the recipient of the loan does not report intangible assets, on a non-consolidated basis with the captive, in excess of one hundred percent (100%) of its net worth.
 2. For situations not meeting the above conditions, prior written approval of the Commissioner must be obtained, which may include a requirement that the loan agreement provide for an automatic repayment schedule tied to some mutually agreeable index, such as the rating agency rating of the parent company.
 3. Any authorized loan must be in a formal agreement containing a provision that the loan is due and payable within ninety (90) days of a written request by the Commissioner, and must contain specific interest and maturity provisions. The loan agreement must be filed with the Commissioner annually in conjunction with the filing of the annual financial information.
 4. Consolidated financial information for the recipient of the loan shall be acceptable only if the report also contains consolidating worksheets.
- C. A pure captive insurance company's non-admitted assets defined under §10-1-102(16), C.R.S. or the NAIC Accounting Practices and Procedures Manual shall not be admitted assets for statutory reporting purposes.

Section 8 Reinsurance

- A. Risk Retention Groups may not take credit for reinsurance agreements with unauthorized reinsurers, or which do not comply with §10-3-~~118~~ 701 et. seq., C.R.S. and Colorado Insurance Regulation 3-3-3 (3 CCR 702-3).
- B. Risk Retention Groups may not assume the liability of any other risk retention group (or any members of such other group) unless the ceding risk retention group (or member) meets the requirements for membership in the assuming risk retention group.

Section 9 Discounting of Loss Reserves

- A. A captive insurance company may request written authorization to discount loss reserves for financial statements in its plan of operation. Such request shall be submitted at least sixty (60) days prior to the requested date of implementation. Discounting shall not occur until the captive insurance company receives prior written authorization from the Commissioner. This approval will not be available on a retroactive basis. Approval may be subsequently withdrawn, in whole or in part, in the event there is any material change in the acceptability of the assumptions, or the experience shows that continued loss reserve discounting fails to satisfy the standards of this section or may create a hazardous financial condition.
- B. Loss reserve discounting will be permitted only for the specific types of claims authorized in the Statement of Statutory Accounting Principles.
- C. The Applicant Requesting Authorization Shall:
 - 1. Define and justify the interest rate assumptions used for discounting;
 - 2. Provide an explanation for the basis and methodology upon which reserves are calculated;
 - 3. Provide a summary of all available historical loss data, historical development factors, loss payout factors, and a history of the frequency and severity of past experience;
 - 4. Provide a statement of opinion by an actuary that the funds available in the captive insurance company for payment of losses and loss expenses are adequate, at a ninety five percent (95%) confidence level, to pay all losses and loss expense obligations incurred and unpaid as of the statement date. The actuary's statement shall include the basis of accepting the captive insurance company's available loss data as being credible in order to give the required confidence level representation. Where credible loss data is not available, the actuary must disclose the data used in order to make the required confidence level representation;
 - 5. An actuarial opinion and the supporting report evidencing compliance with the above standards must be submitted at time of application and with each annual financial report filed thereafter. The opinion must include a statement that the assets supporting the discounted reserves are sufficient to support the anticipated cash flows associated with the reserve development. Approval for discounting reserves may be withdrawn if the submitted opinion is other than unqualified.

Section 10 Examinations

The Commissioner or any person authorized will conduct a formal financial examination of every risk retention group not less frequently than once every five years.

Section 11 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 12 Enforcement

Noncompliance with this regulation may result, ~~after proper notice and hearing,~~ 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 ~~finer civil penalties,~~ issuance of cease and desist orders, and/or suspensions or revocation of license, ~~subject to the requirements of due process. Among others, the penalties provided for in §10-3-1108, C.R.S. may be applied.~~

Section 13 Effective Date

This regulation ~~is shall become~~ effective ~~February 1, 2012~~ January 1, 2017.

Section 14 History

Originally issued as Regulation 89-1, effective October 1, 1989

Amended Regulation 89-3, effective December 1, 1990

Amended Regulation 89-3, effective December 31, 1991

Recodified as Regulation 2-3-1, effective June 1, 1992

Amended Regulation 2-3-1, effective November 30, 1994

Amended Regulation 2-3-1, effective December 1, 1998

Amended Regulation 2-3-1, effective September 30, 2004

Repealed and Repromulgated Regulation 2-3-1, effective February 1, 2012.

~~Amended Regulation 2-3-1, effective January 1, 2017.~~

Notice of Proposed Rulemaking

Tracking number

2016-00462

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-2

Rule title

CORPORATE ISSUES

Rulemaking Hearing**Date**

10/17/2016

Time

02:30 PM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

2-1-7 CONCERNING ISSUANCE OF A CERTIFICATE OF AUTHORITY

The purpose of this regulation is to clarify the standards for issuing certificates of authority to transact insurance business in Colorado to insurers, fraternal benefit societies and interinsurance exchanges.

Statutory authority

10-1-109, 10-14-505

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-2

CORPORATE ISSUES

Proposed Amended Regulation 2-1-7

CONCERNING ISSUANCE OF A CERTIFICATE OF AUTHORITY

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Application by Foreign Insurers
Section 5	Formation of a Colorado Domestic Insurer
Section 6	Change to Existing Authority
Section 7	Reinstatement of Suspended Authority
Section 8	Confidentiality
Section 9	Severability
Section 10	Enforcement
Section 11	Effective Date
Section 12	History

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-14-505, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to clarify the standards for issuing certificates of authority to transact insurance business in Colorado to insurers, fraternal benefit societies and interinsurance exchanges.

Section 3 Applicability

This regulation applies to any company seeking a Certificate of Authority as a property, casualty, multiple line, life or title insurer, fraternal benefit society or interinsurance exchange, or any such company seeking to add lines of business, redomesticate, change its name or otherwise amend its Certificate of Authority.

Section 4 Application by Foreign Insurers

- A. Any foreign company seeking a Certificate of Authority in Colorado as an insurer, fraternal benefit society, or interinsurance exchange shall submit a UCAA expansion application.
- B. An applicant's capital and surplus must meet or exceed the minimum required by Colorado statute. Section 10-3-201, C.R.S. establishes the minimum amount of capital and surplus for each company type. The Division will review both the applicant's company type as determined by its state of domicile and the lines of business that it currently writes. The Division will determine the minimum required under each of these scenarios and apply the greater of the two amounts. For example, an insurer licensed as a multiple line carrier by its state of domicile, which currently only writes casualty lines of business as defined by a Colorado certificate of authority, would be

considered a multiple line carrier in Colorado. As such the company would need to meet the capital and surplus requirement for a multiple line company.

- C. If the company's operation is predominately that of a reinsurer the surplus requirements of a reinsurer pursuant to § 10-3-118-701 et. seq. C.R.S. must be met. The \$20 million surplus requirement shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.
- D. The applicant must demonstrate the ability to maintain the minimum level of capital and surplus at the time of initial licensure and on an on-going basis. This includes the ability to fund for product development and for other causes of surplus strain resulting from increasing business writings or new business ventures. An amount in excess of the statutory minimum capital and surplus is necessary at the time of licensure to ensure that the company has a sufficient cushion to absorb any surplus strain. Generally, the applicant should have three (3) times the authorized control level based on the most recent annual risk based capital calculation.
- E. The applicant must have a sound business plan, sufficient capital to support the plan, and adequate access to additional capital. In addition, the applicant must also demonstrate favorable liquidity, adequate reinsurance from companies authorized in this state, sound management, at least three years of favorable operating results from the three most recent year-end financial statements, and stable revenue, earnings and surplus trends. The commissioner may waive the three years of favorable operating results requirement if the applicant:
 - 1. Is the wholly owned subsidiary of an insurance company authorized to transact insurance in the State of Colorado, or
 - 2. Is the successor in interest through merger or consolidation of an insurance company authorized in Colorado, or
 - 3. Is seeking authority to write only crop insurance policies reinsured by the Federal Crop Insurance Corporation and the applicant company is designated by the United States Department of Agriculture to provide insurance coverage through the Standard Reinsurance Agreement, or
 - 4. Is seeking authority to write a line, or lines, of insurance business that is underserved in this state. Any applicant seeking a waiver of the three years of favorable operating results requirement pursuant to this provision shall supplement the other required application documents with the following:
 - a. Information and documentation as may be necessary to demonstrate to the Commissioner that there is no reasonable or adequate market among authorized insurers for the type of coverage involved in the request
 - b. Documentation that the applicant possesses the financial capability to adequately fund the loss and underwriting costs associated with the type of coverage involved
 - c. A certification from the applicant acknowledging that if the requested waiver is approved, the applicant's authority to transact business shall be limited to the line, or lines of business and type, or types, of coverage involved in the request
- F. The commissioner may require an actuarial opinion and a surplus sufficiency report prior to licensure or at any time after licensure when the commissioner believes that there is a need to review the adequacy of the available surplus with respect to the types of assets and writings of the company. A company seeking licensure must be authorized by its domiciliary state to write

the lines of insurance being requested and demonstrate that it possesses the expertise necessary to write and service such insurance. An applicant who is increasing its market to include new products is also required to demonstrate the necessary expertise. The commissioner may waive this requirement if the company is affiliated with a company licensed in Colorado that writes the same type of insurance being requested. An applicant may be required to provide a guaranty on a form prescribed by the commissioner, to maintain surplus either at the amount required by statute or three (3) times the authorized control level based on the most recent annual risk based capital calculation, whichever is greater.

- H.G.** The commissioner may require any applicant, or affiliated company of the applicant to remedy any hazardous financial condition as outlined in [Colorado Insurance](#) Regulation 3-1-7 prior to licensure.
- I.H.** Substantial errors, fraudulent statements contained in an application or incomplete applications constitute sufficient grounds for denial of the application.
- J.I** The most recent financial examination of the applicant must have a date of account no later than five years from the date of the application for licensure.

Section 5 Formation of a Colorado Domestic Insurer

- A. An application for the formation of a Colorado domestic insurance company as an insurer, fraternal benefit society, or interinsurance exchange must be the UCAA primary application. The applicant company's plan of operation narrative must include an explanation of how § 10-3-128(1), C.R.S. requirements will be fulfilled.
- B. The applicant must demonstrate the ability to maintain the minimum level of capital and surplus at the time of initial licensure and on an on-going basis. This includes the ability to fund for product development and for other causes of surplus strain resulting from increasing business writings or new business ventures. An amount in excess of the statutory minimum capital and surplus is necessary at the time of licensure to ensure that the company has a sufficient cushion to absorb any surplus strain. Generally, the applicant should have three (3) times the authorized control level based on the most recent annual risk based capital calculation.
- C. If the company's operation is predominately that of a reinsurer the surplus requirements of a reinsurer pursuant to § 10-3-~~118~~ **701 et. seq.**, C.R.S. must be met. The \$20 million surplus requirement shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.
- D. The applicant must have a sound business plan, sufficient capital to support the plan, and adequate access to additional capital. In addition, the applicant must also demonstrate favorable liquidity, adequate reinsurance from companies authorized in this state, sound management, and stable revenue, earnings and surplus trends.
- E. The commissioner may require an actuarial opinion and report of the company's surplus adequacy prior to licensure or at any time during which the company is licensed when it is believed that there is a need to review the adequacy of the available surplus with respect to the types of assets and writings of the company.
- F. Substantial errors, fraudulent statements contained in an application or incomplete applications constitute sufficient grounds for denial of the application.

Section 6 Change to Existing Authority

- A. A company may submit a UCAA corporate amendments application to add or delete lines of business, redomesticate, change its name or otherwise amend its Certificate of Authority.
- B. The Commissioner will determine whether the company has the necessary expertise, experience and financial ability for continued licensure in Colorado after the proposed change.

Section 7 Reinstatement of Suspended Authority

Any suspended foreign or domestic insurer, fraternal benefit society or interinsurance exchange may have its certificate of authority reinstated by demonstrating that it meets all the conditions and standards for licensure. Applications must be on a form prescribed by the Commissioner.

Section 8 Confidentiality

- A. Documents submitted in compliance with this regulation, shall generally be considered public records under the public records act, § 24-72-200.1, C.R.S., et seq.
- B. If an applicant considers a document to be confidential, the applicant must submit the document under separate cover clearly labeled "CONFIDENTIAL" with an explanation of why the applicant believes the documents are confidential.
- C. Documentation found to be confidential by the Division will be maintained in a separate, confidential file and will not be released to the general public for inspection or copying except upon court order or agreement of the applicant.

Section 9 Severability

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

Section 10 Enforcement

Non compliance 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 fines civil penalties , issuance of cease and desist orders, and/or suspensions or revocation of license. subject to the requirements of due process .

Section 11 Effective Date

This amended regulation shall bebecome effective March 1, 2012-January 1, 2017.

Section 12 History

Originally adopted November 1, 1990.
Amended September 1, 1992.
Amended March 1, 1994.
Amended November 1, 1999.
Amended September 1, 2002.
Amended March 1, 2012.
Amended regulation effective January 1, 2017.

Notice of Proposed Rulemaking

Tracking number

2016-00464

Department

1200 - Department of Agriculture

Agency

1201 - Animal Health Division

CCR number

8 CCR 1201-18

Rule title

BUREAU OF ANIMAL PROTECTION RULES

Rulemaking Hearing**Date**

10/21/2016

Time

01:45 PM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to identify and articulate the Commissioners authority with regard to administration of the Animal Protection Act in areas of assessment; inspection; and investigations. Other changes establish processes and procedures; training requirements; continuing education; and statistics and reporting. This rule will completely replace the rule previously adopted in 2007.

Statutory authority

§ 35-42-106, C.R.S.

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Colorado Department of Agriculture

Animal Industry Division

Bureau of Animal Protection Rules

8 CCR 1201-18

Definitions:

- ~~(1) — “Agent” means an agent of the Bureau of Animal Protection appointed by the Commissioner and approved by the Agricultural Commission.~~
- ~~(2) — “Commissioned officer” means an agent of the Bureau of Animal Protection approved by the Agricultural Commission.~~

Rules:

- ~~1. — Commissioned Officers of the Bureau of Animal Protection shall inform the Commissioner of Agriculture or his agent before impounding livestock or posting bond for any animal(s) under C.R.S. 35-42-101 through C.R.S. 35-42-114 or 18-9-202.5 respectively.~~
- ~~2. — In addition to the applicable requirements set forth in § 35-42-107, C.R.S., each applicant shall satisfy the following requirements, unless the Commissioner determines that an applicant's experience and training constitute equivalent qualification for a commission:~~
 - ~~A) — 8 hours training and/or classes in legal authority for animal cruelty investigations;~~
 - ~~B) — 10 hours animal care and control skills;~~
 - ~~C) — 3 hours occupational safety (zoonotic diseases, human and animal first aid etc.);~~
 - ~~D) — 5 hours interpersonal communication skills and creative conflict resolution;~~
 - ~~E) — 8 hours equine husbandry including Henneke body condition scoring;~~
 - ~~F) — 1 year experience in law enforcement, animal care and control or animal husbandry; and~~
 - ~~G) — 30 hours of continued education and training shall be completed every 3 years.~~
 - ~~H) — All training courses must be approved by the Commissioner prior to training.~~
- ~~3. — The Commissioner may require any Bureau Commissioned Officer to complete continuing education classes, or may suspend or revoke the officer's commission.~~
- ~~4. — One designated agent per agency shall submit statistics to the Bureau of Animal Protection, via the Bureau's website, indicating the number of animal cruelty/neglect investigations (by species), the number of animals impounded (by species), and the number of summonses issued on a monthly basis. Statistics for any given month shall be due on the last day of each successive month, i.e., statistics due July 31 will reflect the number of investigations that occurred during the month of June.~~

~~Failure to submit statistics may result in the Agriculture Commissioner's deciding to revoke the designated agent's commission, thus taking away any legal authority to investigate or enforce any laws normally granted under §35-42-107, C.R.S.~~

PART 1. DEFINITIONS

- 1.1. "ABANDON" MEANS THE LEAVING OF AN ANIMAL WITHOUT ADEQUATE PROVISIONS FOR THE ANIMAL'S PROPER CARE BY ITS OWNER OR CARETAKER, THE PERSON RESPONSIBLE FOR THE ANIMAL'S CARE OR CUSTODY, OR ANY OTHER PERSON HAVING POSSESSION OF SUCH AN ANIMAL.**
- 1.2. "ANIMAL" MEANS ANY LIVING DUMB CREATURE.**
- 1.3. "ANIMAL PROTECTION ACT" MEANS THE ARTICLE DESCRIBING THE SCOPE OF, AGENTS RESPONSIBLE FOR ENFORCEMENT OF, AND CONDITIONS THAT ELICIT ANIMAL PROTECTION IN THE COLORADO REVISED STATUTES § 35-42-101, C.R.S. ET SEQ.**
- 1.4. "ASSESSMENT" MEANS TO MAKE AN ON-SITE DETERMINATION OF: WHETHER AN ANIMAL IS CONFINED WITHOUT AN ADEQUATE SUPPLY OF FOOD AND WATER AND MAY BE MISTREATED, NEGLECTED, OR ABANDONED OR WHETHER AN ANIMAL IS THE SUBJECT OF CRUELTY TO ANIMALS.**
- 1.5. "ASSIST" MEANS TO WORK UNDER THE DIRECTION AND AUTHORITY OF LAW ENFORCEMENT.**
- 1.6. "COMMISSIONED AGENT" OR "AGENT" MEANS AN AGENT OF THE BUREAU OF ANIMAL PROTECTION APPROVED BY THE COLORADO AGRICULTURAL COMMISSION AND APPOINTED BY THE COMMISSIONER.**
 - 1.6.1. "NON-PROFIT AGENT" MEANS A COMMISSIONED AGENT OF THE BUREAU OF ANIMAL PROTECTION WHO IS EMPLOYED BY A NON-PROFIT AGENCY.**
 - 1.6.2. "MUNICIPAL AGENT" MEANS A COMMISSIONED AGENT OF THE BUREAU OF ANIMAL PROTECTION WHO IS EMPLOYED BY A COUNTY, CITY, OR OTHER MUNICIPAL ORGANIZATION.**
 - 1.6.3. "LAW ENFORCEMENT AGENT" MEANS A COMMISSIONED AGENT OF THE BUREAU OF ANIMAL PROTECTION WHO IS EMPLOYED BY A LAW ENFORCEMENT AGENCY AND WHOSE EMPLOYMENT RELATIONSHIP DEFINES THE SCOPE OF THE AGENT'S AUTHORITIES.**
 - 1.6.4. "DEPARTMENT OF AGRICULTURE AGENT" MEANS AN AGENT OF THE BUREAU OF ANIMAL PROTECTION WHO IS EMPLOYED BY THE COLORADO DEPARTMENT OF AGRICULTURE.**
- 1.7. "COMMISSIONER" MEANS THE COLORADO COMMISSIONER OF AGRICULTURE OR HIS DESIGNEE.**
- 1.8. "COMPANION OR DOMESTIC ANIMAL" MEANS DOMESTIC DOGS, DOMESTIC CATS, PET BIRDS, AND OTHER NON-LIVESTOCK SPECIES.**
- 1.9. "CRIMINAL INVESTIGATION" MEANS A FACT-FINDING PROCESS THAT FOLLOWS AN INITIAL ASSESSMENT AND THAT IS FOR THE PURPOSE OF GATHERING EVIDENCE TO SUPPORT A CRIMINAL CHARGE FOR CRUELTY TO ANIMALS OR NEGLECT, MISTREATMENT, OR ABANDONMENT OF AN ANIMAL WHICH FACT-FINDING PROCESS OCCURS PURSUANT TO THE AUTHORITY OF AND AT THE DIRECTION OF LAW ENFORCEMENT.**
- 1.10. "CRUELTY TO ANIMALS" MEANS ACTIONS AGAINST AN ANIMAL, INCLUDING BUT NOT LIMITED TO SUBJECTING AN ANIMAL TO: KNOWING, RECKLESS, OR CRIMINALLY NEGLIGENT MISTREATMENT OR NEGLECT; INTENTIONAL ABANDONMENT; OR KNOWING, RECKLESS, OR CRIMINALLY NEGLIGENT TORTURE, NEEDLESS MUTILATION, OR NEEDLESS DEATH, AS SET FORTH IN THE COLORADO REVISED STATUTES AT § 18-9-201, C.R.S. ET SEQ.**
- 1.11. "DANGEROUS DOG" MEANS ANY DOG THAT:**

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- 1.11.1. ~~INFLECTS BODILY OR SERIOUS BODILY INJURY UPON OR CAUSES THE DEATH OF A PERSON OR DOMESTIC ANIMAL, OR LIVESTOCK; OR~~
- 1.11.2. ~~DEMONSTRATES TENDENCIES THAT WOULD CAUSE A REASONABLE PERSON TO BELIEVE THAT THE DOG MAY INFLECT BODILY OR SERIOUS BODILY INJURY UPON OR CAUSE THE DEATH OF ANY PERSON OR DOMESTIC ANIMAL OR LIVESTOCK; OR~~
- 1.11.3. ~~IS TRAINED OR USED FOR ANIMAL FIGHTING.~~
- 1.12. ~~"DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF AGRICULTURE.~~
- 1.13. ~~"INSPECTION" MEANS A FACT-FINDING PROCESS THAT FOLLOWS AN INITIAL ASSESSMENT, UNDERTAKEN WHEN THE INITIAL ASSESSMENT YIELDS CONCERNS THAT AN ANIMAL MAY BE THE SUBJECT OF CRUELTY TO ANIMALS OR THAT AN ANIMAL MAY BE THE SUBJECT OF NEGLECT, MISTREATMENT, OR ABANDONMENT. INSPECTION MAY INCLUDE INTERVIEWING, VISUAL OBSERVATIONS, AND TAKING PHOTOGRAPHS.~~
- 1.14. ~~"INVESTIGATION" MEANS A FACT-FINDING PROCESS THAT FOLLOWS AN INITIAL ASSESSMENT FOR THE PURPOSE OF GATHERING EVIDENCE TO SUPPORT A CRIMINAL CHARGE FOR CRUELTY TO ANIMALS OR NEGLECT, MISTREATMENT, OR ABANDONMENT OF AN ANIMAL OR TO SUPPORT A CIVIL CHARGE FOR NEGLECT, MISTREATMENT, OR ABANDONMENT OF AN ANIMAL.~~
- 1.15. ~~"LAW ENFORCEMENT" MEANS A FULLY P.O.S.T.-CERTIFIED PEACE OFFICER, WITHIN THEIR JURISDICTION. "LAW ENFORCEMENT" INCLUDES BUT IS NOT LIMITED TO A SHERIFF, UNDERSHERIFF, OR DEPUTY SHERIFF; A POLICE OFFICER; A TOWN MARSHAL OR DEPUTY TOWN MARSHAL; A COLORADO STATE TROOPER; OR A COLORADO BUREAU OF INVESTIGATION AGENT.~~
- 1.16. ~~"LAW ENFORCEMENT AGENCY" MEANS ANY AGENCY OF THE STATE OR ITS POLITICAL SUBDIVISIONS THAT IS RESPONSIBLE FOR ENFORCING THE LAWS OF THIS STATE. "LAW ENFORCEMENT AGENCY" INCLUDES BUT IS NOT LIMITED TO ANY POLICE DEPARTMENT, SHERIFF'S DEPARTMENT, AND THE DISTRICT ATTORNEY'S OFFICE.~~
- 1.17. ~~"LIVESTOCK" MEANS CATTLE, SWINE, SHEEP, GOATS, AND SUCH HORSES, MULES, ASSES, AND OTHER ANIMALS USED IN THE FARM OR RANCH PRODUCTION OF FOOD, FIBER, OR OTHER PRODUCTS DEFINED BY THE COMMISSIONER AS AGRICULTURAL PRODUCTS.~~
- 1.18. ~~"MISTREAT/MISTREATMENT" MEANS EVERY ACT OR OMISSION WHICH CAUSES OR UNREASONABLY PERMITS THE CONTINUATION OF UNNECESSARY OR UNJUSTIFIABLE PAIN OR SUFFERING.~~
- 1.19. ~~"NEGLECT" MEANS FAILURE TO PROVIDE FOOD, WATER, PROTECTION FROM THE ELEMENTS, OR OTHER CARE GENERALLY CONSIDERED TO BE NORMAL, USUAL, AND ACCEPTED FOR AN ANIMAL'S HEALTH AND WELL-BEING CONSISTENT WITH SPECIES, BREED, AND TYPE OF ANIMAL.~~
- 1.20. ~~"SITE" MEANS THE LOCATION OF AN ANIMAL.~~
- 1.21. ~~"STATISTICS" MEANS EACH COMMISSIONED AGENT'S NUMBER OF ANIMAL ASSESSMENTS (BY SPECIES), THE NUMBER OF DOGS SEIZED AND IMPOUNDED AS A RESULT OF AN AGENT'S ISSUING A SUMMONS AND COMPLAINT FOR A CHARGE OF UNLAWFUL OWNERSHIP OF A DANGEROUS DOG, AND THE NUMBER OF ALL SUMMONSES ISSUED ON A MONTHLY BASIS.~~
- 1.22. ~~"UNLAWFUL OWNERSHIP OF A DANGEROUS DOG" MEANS OWNING, POSSESSING, HARBORING, KEEPING, HAVING FINANCIAL OR PROPERTY INTEREST IN, OR HAVING CONTROL OR CUSTODY OF A DANGEROUS DOG.~~

PART 2. PROCESS AND PROCEDURES

- 2.1. ASSESSMENT. A COMMISSIONED AGENT MAY CONDUCT AN ASSESSMENT AT A SITE WHEN THE

COMMISSIONED AGENT LEARNS, WHETHER BY COMPLAINT OR BY TIP OR BY DIRECT CONTACT WITH DEPARTMENT PERSONNEL, THAT AN ANIMAL MAY BE CONFINED WITHOUT AN ADEQUATE SUPPLY OF FOOD OR WATER, THAT AN ANIMAL MAY BE THE SUBJECT OF MISTREATMENT, NEGLECT, OR ABANDONMENT, OR THAT AN ANIMAL MAY BE THE SUBJECT OF CRUELTY TO ANIMALS.

2.1.1. INADEQUATE SUPPLY OF FOOD AND WATER. A COMMISSIONED AGENT WHO FINDS AN ANIMAL CONFINED WITHOUT AN ADEQUATE SUPPLY OF FOOD AND WATER MAY ENTER INTO THE LOCATION WHERE THE ANIMAL IS CONFINED AND PROVIDE IT WITH FOOD AND WATER.

2.1.1.1. NO COMMISSIONED AGENT MAY ENTER INTO A PERSON'S PRIVATE RESIDENCE.

2.1.1.2. A COMMISSIONED AGENT WHO ENTERS INTO PROPERTY TO PROVIDE FOOD AND WATER TO AN ANIMAL CONFINED WITHOUT AN ADEQUATE SUPPLY OF FOOD AND WATER SHALL POST NOTIFICATION OF SAID ENTRY AT AN ENTRANCE TO OR AT A CONSPICUOUS PLACE UPON SUCH AREA OR BUILDING WHERE SUCH ANIMAL IS CONFINED.

2.1.1.3. IN THE CASE OF COMPANION ANIMALS, IF SUCH ANIMAL IS NOT CARED FOR BY A PERSON OTHER THAN THE COMMISSIONED AGENT OR OTHER PEACE OFFICER OR A VETERINARIAN WITHIN 72 HOURS OF THE POSTING OF THE NOTIFICATION, SUCH COMPANION ANIMAL SHALL BE PRESUMED TO HAVE BEEN ABANDONED UNDER CIRCUMSTANCES IN WHICH THE ANIMAL'S LIFE OR HEALTH IS ENDANGERED.

2.1.1.4. AFTER CONSULTATION WITH THE DEPARTMENT, AND UPON DIRECTION AND APPROVAL FROM THE DEPARTMENT, A COMMISSIONED AGENT MAY TAKE CHARGE OF ANY COMPANION ANIMAL PRESUMED TO HAVE BEEN ABANDONED PURSUANT TO THIS SECTION.

2.2. INSPECTION.

2.2.1. MISTREATMENT, NEGLECT, OR ABANDONMENT: COMPANION ANIMAL. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT A COMPANION ANIMAL IS THE SUBJECT OF MISTREATMENT, NEGLECT, OR ABANDONMENT, MAY PERFORM THE FOLLOWING ACTIONS WITHOUT THE ASSISTANCE OF LAW ENFORCEMENT:

2.2.1.1. INTERVIEW THE COMPANION ANIMAL'S OWNERS OR CARETAKERS:

2.2.1.2. INTERVIEW ANY WITNESSES WHO MAY HAVE INFORMATION RELATED TO THE ALLEGED MISTREATMENT, NEGLECT, OR ABANDONMENT:

2.2.1.3. VISUALLY OBSERVE THE COMPANION ANIMAL IF SUCH VISUAL OBSERVATION CAN BE ACHIEVED WITHOUT ENTERING ILLEGALLY INTO OR ONTO PRIVATE PROPERTY, OR WHEN A COMMISSIONED AGENT HAS ENTERED THE PROPERTY TO PROVIDE FOOD OR WATER WHERE SUCH COMPANION ANIMAL IS CONFINED WITHOUT ADEQUATE FOOD OR WATER.

2.2.1.4. TAKE ANY PHOTOGRAPHS NECESSARY TO AID THE AGENT WITH RECOLLECTION OF THE ALLEGED MISTREATMENT, NEGLECT, OR ABANDONMENT.

2.2.1.5. ISSUE A SUMMONS AND COMPLAINT TO THE OWNER, CARETAKER, OR OTHER PERSON WHO HAS POSSESSION OF THE COMPANION ANIMAL.

2.2.1.6. CONTACT THE COLORADO DEPARTMENT OF AGRICULTURE IF THE AGENT HAS REASONABLE CAUSE TO BELIEVE THAT THE ANIMAL HAS BEEN MISTREATED, NEGLECTED, OR ABANDONED SO THAT THE ANIMAL'S LIFE OR HEALTH IS ENDANGERED, AND THAT THE PERSON IN CONTROL OF THE ANIMAL IS UNABLE TO ADEQUATELY PROVIDE FOR THE ANIMAL AND IS NOT A FIT PERSON TO OWN THE ANIMAL.

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2.2.2. MISTREATMENT, NEGLECT, OR ABANDONMENT: LIVESTOCK. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE COMMISSIONED AGENT REASONABLE GROUNDS TO BELIEVE THAT LIVESTOCK IS THE SUBJECT OF MISTREATMENT, NEGLECT, OR ABANDONMENT, MAY PERFORM THE FOLLOWING ACTIONS WITHOUT THE ASSISTANCE OF LAW ENFORCEMENT:

2.2.2.1. INTERVIEW THE LIVESTOCK'S OWNERS OR CARETAKERS;

2.2.2.2. INTERVIEW ANY WITNESSES WHO MAY HAVE INFORMATION RELATED TO THE ALLEGED MISTREATMENT, NEGLECT, OR ABANDONMENT;

2.2.2.3. VISUALLY OBSERVE THE LIVESTOCK IF SUCH VISUAL OBSERVATION CAN BE ACHIEVED WITHOUT ENTERING ILLEGALLY INTO OR ONTO PRIVATE PROPERTY, OR WHEN A COMMISSIONED AGENT HAS ENTERED THE PROPERTY TO PROVIDE FOOD OR WATER WHERE SUCH LIVESTOCK IS CONFINED WITHOUT ADEQUATE FOOD OR WATER.

2.2.2.4. TAKE ANY PHOTOGRAPHS NECESSARY TO AID THE COMMISSIONED AGENT WITH RECOLLECTION OF THE ALLEGED MISTREATMENT, NEGLECT, OR ABANDONMENT.

2.2.2.5. CONTACT LAW ENFORCEMENT TO PROCEED WITH CRIMINAL INVESTIGATION PURSUANT TO THE DIRECTION AND UNDER THE AUTHORITY OF LAW ENFORCEMENT.

2.2.2.6. CONTACT THE COLORADO DEPARTMENT OF AGRICULTURE IF THE AGENT HAS REASONABLE CAUSE TO BELIEVE THAT THE ANIMAL HAS BEEN MISTREATED, NEGLECTED, OR ABANDONED SO THAT THE ANIMAL'S LIFE OR HEALTH IS ENDANGERED, AND THAT THE PERSON IN CONTROL OF THE ANIMAL IS UNABLE TO ADEQUATELY PROVIDE FOR THE ANIMAL AND IS NOT A FIT PERSON TO OWN THE ANIMAL.

2.2.3. CRUELTY TO ANIMALS: COMPANION ANIMAL. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT A COMPANION ANIMAL IS THE SUBJECT OF CRUELTY TO ANIMALS, MAY PERFORM THE FOLLOWING ACTIONS WITHOUT THE ASSISTANCE OF LAW ENFORCEMENT:

2.2.3.1. INTERVIEW THE COMPANION ANIMAL'S OWNERS OR CARETAKERS;

2.2.3.2. INTERVIEW ANY WITNESSES WHO MAY HAVE INFORMATION RELATED TO THE ALLEGED CRUELTY TO ANIMALS;

2.2.3.3. VISUALLY INSPECT THE COMPANION ANIMAL IF SUCH VISUAL INSPECTION CAN BE ACHIEVED WITHOUT ENTERING ILLEGALLY INTO OR ONTO PRIVATE PROPERTY, OR WHEN A COMMISSIONED AGENT HAS ENTERED THE PROPERTY TO PROVIDE FOOD OR WATER WHERE SUCH COMPANION ANIMAL IS CONFINED WITHOUT ADEQUATE FOOD OR WATER.

2.2.3.4. TAKE ANY PHOTOGRAPHS NECESSARY TO AID THE AGENT WITH RECOLLECTION OF THE ALLEGED CRUELTY TO ANIMALS.

2.2.3.5. ISSUE A SUMMONS AND COMPLAINT TO THE OWNER, CARETAKER, OR OTHER PERSON WHO HAS POSSESSION OF THE COMPANION ANIMAL.

2.2.3.6. CONTACT LAW ENFORCEMENT TO PROCEED WITH CRIMINAL INVESTIGATION PURSUANT TO THE DIRECTION AND UNDER THE AUTHORITY OF LAW ENFORCEMENT.

2.2.4. CRUELTY TO ANIMALS: LIVESTOCK. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT LIVESTOCK IS THE SUBJECT OF CRUELTY TO ANIMALS, MAY PERFORM THE FOLLOWING ACTIONS WITHOUT THE ASSISTANCE OF LAW

ENFORCEMENT:

2.2.4.1. INTERVIEW THE LIVESTOCK'S OWNERS OR CARETAKERS:

2.2.4.2. INTERVIEW ANY WITNESSES WHO MAY HAVE INFORMATION RELATED TO THE ALLEGED CRUELTY TO ANIMALS:

2.2.4.3. VISUALLY OBSERVE THE LIVESTOCK IF SUCH VISUAL OBSERVATION CAN BE ACHIEVED WITHOUT ENTERING ILLEGALLY INTO OR ONTO PRIVATE PROPERTY, OR WHEN A COMMISSIONED AGENT HAS ENTERED THE PROPERTY TO PROVIDE FOOD OR WATER WHERE SUCH LIVESTOCK IS CONFINED WITHOUT ADEQUATE FOOD OR WATER.

2.2.4.4. TAKE ANY PHOTOGRAPHS NECESSARY TO AID THE COMMISSIONED AGENT WITH RECOLLECTION OF THE ALLEGED CRUELTY TO ANIMALS.

2.2.4.5. CONTACT LAW ENFORCEMENT TO PROCEED WITH CRIMINAL INVESTIGATION PURSUANT TO THE DIRECTION AND UNDER THE AUTHORITY OF LAW ENFORCEMENT.

2.3. INVESTIGATION.

2.3.1. MISTREATMENT, NEGLECT, OR ABANDONMENT: COMPANION ANIMAL. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT A COMPANION ANIMAL IS THE SUBJECT OF MISTREATMENT, NEGLECT, OR ABANDONMENT, MAY NOT PROCEED BEYOND THE INSPECTION OUTLINED IN SECTION 2.2.1, INCLUDING SEIZING AND IMPOUNDING THE COMPANION ANIMAL, WITHOUT DIRECTION FROM AND UNDER THE AUTHORITY OF LAW ENFORCEMENT OR THE DEPARTMENT.

2.3.2. MISTREATMENT, NEGLECT, OR ABANDONMENT: LIVESTOCK. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT LIVESTOCK IS THE SUBJECT OF MISTREATMENT, NEGLECT, OR ABANDONMENT, MAY NOT PROCEED BEYOND THE INSPECTION OUTLINED IN SECTION 2.2.2 WITHOUT DIRECTION FROM AND UNDER THE AUTHORITY OF LAW ENFORCEMENT OR THE DEPARTMENT.

2.3.3. CRUELTY TO ANIMALS: COMPANION ANIMAL. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT A COMPANION ANIMAL IS THE SUBJECT CRUELTY TO ANIMALS, MAY NOT PROCEED BEYOND THE INSPECTION OUTLINED IN SECTION 2.2.3, INCLUDING SEIZING AND IMPOUNDING THE COMPANION ANIMAL, WITHOUT DIRECTION FROM AND UNDER THE AUTHORITY OF LAW ENFORCEMENT.

2.3.4. CRUELTY TO ANIMALS: LIVESTOCK. A COMMISSIONED AGENT, WHOSE ASSESSMENT GIVES THE AGENT REASONABLE GROUNDS TO BELIEVE THAT LIVESTOCK IS THE SUBJECT CRUELTY TO ANIMALS, MAY NOT PROCEED BEYOND THE INSPECTION OUTLINED IN SECTION 2.2.4 WITHOUT DIRECTION FROM AND UNDER THE AUTHORITY OF LAW ENFORCEMENT.

2.4. UNLAWFUL OWNERSHIP OF A DANGEROUS DOG. A COMMISSIONED AGENT, WHO IS ACTING UNDER THE AUTHORITY OF APPLICABLE LOCAL OR COUNTY ORDINANCES, MAY CONDUCT AN INVESTIGATION OF AN ALLEGATION OF UNLAWFUL OWNERSHIP OF A DANGEROUS DOG.

2.4.1. SUMMONS AND COMPLAINT: WHERE REASONABLE GROUNDS EXIST TO BELIEVE THAT A PERSON HAS COMMITTED THE UNLAWFUL OWNERSHIP OF A DANGEROUS DOG, A COMMISSIONED AGENT MAY ISSUE TO THE OWNER OR CARETAKER OF THAT DOG A SUMMONS AND COMPLAINT FOR AN ALLEGED VIOLATION OF § 18-9-204.5, C.R.S. UNLAWFUL OWNERSHIP OF A DANGEROUS DOG.

2.4.2. SEIZE AND IMPOUND: WHERE A COMMISSIONED AGENT HAS ISSUED A SUMMONS AND COMPLAINT FOR AN ALLEGED VIOLATION OF § 18-9-204.5, C.R.S. UNLAWFUL OWNERSHIP OF A DANGEROUS

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~~DOG, THAT COMMISSIONED AGENT MAY TAKE THE DOG INTO CUSTODY AND PLACE IT INTO A PUBLIC ANIMAL SHELTER.~~

~~2.4.3. WARRANT: WHERE A COMMISSIONED AGENT HAS ISSUED A SUMMONS AND COMPLAINT FOR AN ALLEGED VIOLATION OF § 18-9-204.5, C.R.S. UNLAWFUL OWNERSHIP OF A DANGEROUS DOG, AND WHERE THE OWNER OR CARETAKER OR OTHER PERSON IN POSSESSION OF THE DOG REFUSES TO PERMIT THE AGENT TO SEIZE AND IMPOUND THE DOG, THE AGENT MAY CONTACT LAW ENFORCEMENT FOR ASSISTANCE WITH OBTAINING AND EXECUTING A SEARCH WARRANT TO SEIZE THE DOG.~~

PART 3. AGENT TRAINING REQUIREMENTS

IN ADDITION TO THE APPLICABLE REQUIREMENTS SET FORTH IN § 35-42-107 C.R.S., EACH APPLICANT MUST SATISFY THESE TRAINING AND EXPERIENCE REQUIREMENTS AS SET FORTH BELOW TO BE ELIGIBLE TO RECEIVE A COMMISSION, UNLESS THE COMMISSIONER DETERMINES THAT AN APPLICANT'S EXPERIENCE AND TRAINING CONSTITUTE EQUIVALENT QUALIFICATION FOR A COMMISSION.

3.1. 40 HOURS OF PRIOR TRAINING, TO INCLUDE:

3.1.1. LEGAL AUTHORITY FOR INVESTIGATIONS, ASSESSMENTS, AND INSPECTIONS (THIS CAN INCLUDE BUT DOES NOT REQUIRE EVIDENCE COLLECTION AND CHAIN OF CUSTODY);

3.1.2. ANIMAL CARE, BEHAVIOR, AND HANDLING;

3.1.3. OCCUPATIONAL SAFETY;

3.1.4. CRISIS INTERVENTION AND CONFLICT RESOLUTION;

3.1.5. REPORT WRITING;

3.1.6. PROFESSIONALISM AND ETHICS;

3.1.7. ANIMAL HUSBANDRY AND BODY CONDITION SCORING; AND

3.1.8. OPTIONAL TRAINING, WHICH MAY INCLUDE BUT IS NOT LIMITED TO:

3.1.8.1. COST OF CARE;

3.1.8.2. EVIDENCE COLLECTION AND CHAIN OF CUSTODY;

3.1.8.3. COURTROOM PREPARATION; AND

3.1.8.4. CROSS REPORTING.

3.2. TRAINING PROVIDED BY THE COLORADO DEPARTMENT OF AGRICULTURE, TO INCLUDE, AT MINIMUM:

3.2.1. COLORADO LAWS INCLUDING COLORADO REVISED STATUTES TITLES 18 AND 35;

3.2.2. SCOPE OF AUTHORITY; AND

3.2.3. BUREAU OF ANIMAL PROTECTION RULE 8 CCR 1201-1218.

3.3. ONE YEAR EXPERIENCE IN REGULATORY OR CODE ENFORCEMENT, ANIMAL CARE AND CONTROL, OR ANIMAL CRUELTY INVESTIGATIONS.

PART 4. CONTINUING EDUCATION, TERMS OF COMMISSIONS AND OF RENEWALS, AND REVOCATION

4.1. CONTINUING EDUCATION: 32 HOURS OF CONTINUING EDUCATION AND TRAINING SHALL BE COMPLETED EVERY 2 YEARS.

4.1.1. CONTINUING EDUCATION COURSE INFORMATION MUST BE SUBMITTED TO THE COLORADO DEPARTMENT OF AGRICULTURE FOR APPROVAL AND MUST BE SUBMITTED AND APPROVED PRIOR TO A TRAINING COURSE BEING OFFERED AS CONTINUING EDUCATION.

4.1.2. NO TRAINING COURSE SUBMITTED FOR APPROVAL WILL BE CONSIDERED VALID UNTIL IT RECEIVES THE COMMISSIONER'S APPROVAL. A WIDE VARIETY OF TRAINING FALLS WITHIN THE SCOPE OF BAP AGENT AUTHORITY, AND WILL BE CONSIDERED BY THE COMMISSIONER.

4.2. TERM OF COMMISSION: EACH COMMISSION SHALL REMAIN VALID FOR THE PERIOD OF ONE CALENDAR YEAR FROM THE DATE IT IS ISSUED.

4.3. RENEWAL OF COMMISSION: A COMMISSIONED AGENT WHO DESIRES TO CONTINUE AS A COMMISSIONED AGENT MUST APPLY FOR RENEWAL ANNUALLY, PROVIDING WITH SUCH APPLICATION FOR RENEWAL, AT A MINIMUM:

4.3.1. EMPLOYMENT INFORMATION: CURRENT EMPLOYER NAME, ADDRESS, PHONE, CATEGORY, AND SUPERVISOR INFORMATION;

4.3.2. CONTINUING EDUCATION: EVIDENCE OF COMPLETED, APPROVED, CONTINUING EDUCATION CREDITS, IF APPLICABLE;

4.3.3. STATISTICS: FULLY SUBMITTED STATISTICS FOR THE AGENT'S PREVIOUS YEAR'S ACTIVITIES;

4.3.4. EXPIRED BAP CARDS MUST BE RETURNED TO CDA; AND

4.3.5. ADDITIONAL REQUIREMENTS OF COMMISSIONER: ANY ADDITIONAL REQUIREMENTS OR INFORMATION THAT THE COMMISSIONER MAY REQUEST MUST BE PROVIDED.

4.3.6. TERM OF RENEWAL: RECOMMISSIONED AGENTS WILL BE RECOMMISSIONED FOR ONE YEAR, SUBJECT TO ANY SUBSEQUENT DETERMINATION BY THE COMMISSIONER TO REVOKE AN AGENT'S COMMISSION.

4.4. SUSPENSION OR REVOCATION OF COMMISSION: THE COMMISSIONER MAY SUSPEND OR REVOKE A COMMISSIONED AGENT'S COMMISSION AT THE COMMISSIONER'S DISCRETION.

PART 5. STATISTICS AND REPORTING

5.1.1. AT LEAST ONE REPRESENTATIVE FROM EACH AGENCY SHALL BE DESIGNATED TO SUBMIT STATISTICS TO THE BUREAU OF ANIMAL PROTECTION.

5.1.2. STATISTICS FOR EACH COMMISSIONED AGENT SHALL BE COMPILED AND REPORTED AS PART OF THE AGENCY STATISTICS.

5.1.3. STATISTICS FOR ANY GIVEN MONTH SHALL BE DUE ON THE 15TH DAY OF EACH SUCCESSIVE MONTH.

5.1.4. STATISTICS TO BE REPORTED FOR THE MONTH SHALL INCLUDE:

5.1.4.1. TOTAL NUMBER OF BAP CALLS FOR SERVICE RESPONDED TO BY AGENCY;

5.1.4.2. TOTAL NUMBER OF ANIMALS ASSESSED AND INSPECTED, BY SPECIES;

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5.1.4.3. TOTAL NUMBER OF ANIMALS IMPOUNDED, BY SPECIES;

5.1.4.4. TOTAL NUMBER OF WARNINGS ISSUED, BOTH VERBAL AND WRITTEN; AND

5.1.4.5. TOTAL NUMBER OF SUMMONSES ISSUED.

PARTS 6-8. RESERVED

PART 9. Statements of Basis, Specific Statutory Authority and Purpose

9.1. Adopted April 4, 2003 – Effective June 30, 2003

The Colorado State Agricultural Commission adopts these rules pursuant to Section C.R.S. 35-42-106.

The purpose of rule 1 is to inform the State Veterinarian's Office before any animal is impounded, and to protect the owner from having his animal(s) unnecessarily impounded, or to require an owner to post bond for an unnecessary impoundment.

The purpose of rule 2 is to have minimum education/experience requirements for BAP commission applicants.

The purpose of rule 3 is to provide choices in disciplinary action, other than commission revocation, for any problem that may arise regarding legal authority.

9.2. Adopted March 5, 2007 – Effective May 1, 2007

The Commissioner of Agriculture adopts these rules pursuant to § 35-42-106, C.R.S.

The purpose of rule 4 is to establish reporting requirements to aid the Bureau of Animal Protection in compiling accurate statistics to be reported to the Commissioner of Agriculture and other entities as requested. These statistics reflect work done by all agents of the Bureau as commissioned law enforcement officers as defined in § 35-42-107, C.R.S.

9.3. ADOPTED NOVEMBER 9, 2016- EFFECTIVE DECEMBER 30, 2016

THE COMMISSIONER OF AGRICULTURE ADOPTS THESE RULES PURSUANT TO THE AUTHORITIES LOCATED AT § 35-42-106, C.R.S.

THE PURPOSE OF THESE RULES IS TO IDENTIFY AND ARTICULATE THE COMMISSIONER'S AUTHORITY WITH REGARD TO ADMINISTRATION OF THE ANIMAL PROTECTION ACT. THIS RULE ESTABLISHES HOW THE COMMISSIONER'S AUTHORITY IS TO BE EXERCISED WITH REGARD TO ASSESSMENT, INSPECTION, AND INVESTIGATION OF COMPANION ANIMALS AND OF LIVESTOCK. THIS RULE FURTHER ESTABLISHES THE PROCESSES AND PROCEDURES IN PLACE FOR SUCH INSPECTIONS AND INVESTIGATIONS RELATED TO POTENTIAL VIOLATIONS OF THE ANIMAL PROTECTION ACT. ADDITIONALLY, THIS RULE SETS FORTH THE TRAINING REQUIREMENTS AND CONTINUING EDUCATION FOR INDIVIDUALS WHO DESIRE TO BE AGENTS AND WHO ARE CURRENTLY AGENTS OF THE BUREAU OF ANIMAL PROTECTION. FINALLY, THIS RULE ESTABLISHES THE STATISTICS THAT THE COMMISSIONER REQUIRES BE KEPT WITH REGARD TO ENFORCEMENT OF THIS ANIMAL PROTECTION ACT AND THE MANNER BY WHICH THOSE STATISTICS MUST BE REPORTED TO THE COMMISSIONER.

THE RULES PREVIOUSLY ADOPTED PURSUANT TO THE ANIMAL PROTECTION ACT HAD NOT BEEN REVISED OR UPDATED SINCE 2007. THIS RULE-MAKING COMPLETELY REPLACES THOSE RULES WITH UPDATED, MORE USER-FRIENDLY, AND EXPANDED RULES FOR ENFORCEMENT OF THE ANIMAL PROTECTION ACT.



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

Bureau of Animal Protection Rules

8 CCR 1201-18

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 21, 2016
TIME: 1:45 p.m.
LOCATION: Colorado Department of Agriculture
San Juan Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to identify and articulate the Commissioner's authority with regard to administration of the Animal Protection Act in areas of assessment; inspection; and investigations. Other changes establish processes and procedures; training requirements; continuing education; and statistics and reporting. This rule will completely replace the rule previously adopted in 2007.

The statutory authority for these rules is § 35-42-106, 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00458

Department

1200 - Department of Agriculture

Agency

1201 - Animal Health Division

CCR number

8 CCR 1201-20

Rule title

LIVE BIRD MARKET RULE

Rulemaking Hearing**Date**

10/21/2016

Time

01:30 PM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to update matters related to the identification, control, and sanitation related to avian influenza, both low pathogenic and highly pathogenic influenzas, in bird production units, bird distribution units, and live bird markets within Colorado. Changes also include renumbering the rule to be consistent with other Department rules.

Statutory authority

§ 35-50-105(3)(a),(c),(f),(h),(i),(j),(l), and (p), C.R.S.

Contact information**Name**

Karen Lover

Title

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COLORADO DEPARTMENT OF AGRICULTURE

Animal ~~Industry~~ **HEALTH** Division

8 CCR 1201-20

LIVE BIRD MARKET RULE

Part 1: Introduction

Previous outbreaks of avian influenza (AI) have been associated with considerable economic losses for producers and increased costs to consumers and state and federal government. Losses incurred are the result of increased mortality, decreased production value, depopulation of infected flocks, disposal of carcasses, cleaning and disinfection of infected premises, disease surveillance and testing, institution of quarantine measures and loss of domestic and international trade.

Historically, low ~~pathogenicity~~ **PATHOGENIC** avian influenza (LPAI) viruses have repeatedly been isolated from the live bird marketing (LBM) system in the United States. Although LPAI virus infections cause little or no clinical illness in poultry, decreased production, increased mortality and spread of the disease are of significant concern. In addition, LPAI H5 and H7 subtypes have been shown to possess the potential to mutate into high ~~pathogenicity~~ **PATHOGENIC** avian influenza (HPAI) subtypes. Avian influenza virus outbreaks, if they occurred today, could cause serious harm to the Colorado commercial poultry industry.

The Colorado Department of Agriculture (CDA) is responsible for protecting the health of the state's poultry flocks and supporting an environment conducive to trade. Our global trading partners are increasingly wary of importing products from countries with ~~LPAI-AVIAN INFLUENZA VIRUS DISEASE OUTBREAKS.~~ Such trade concerns, along with the risk of disease transmission posed by the virus circulating in the LBM system, have increased the need to prevent and control avian influenza outbreaks in the LBM system.

In order to protect Colorado poultry from avian influenza and prevent interruptions in trade, State and industry officials must cooperate to actively prevent and control LPAI ~~OR~~ **HPAI**. In addition, some cases of human infections of HPAI have occurred in other countries in recent years. Therefore, human health would also benefit from a program that prevents the development of HPAI infections through the control of LPAI infections.

Premises and individual flock identification will be important to the success of this rule; therefore, the **USDA ANIMAL DISEASE TRACEABILITY RULE** ~~National Animal Identification System (NAIS)~~ will be an aid in the administration of this rule.

The following goals of this rule apply to all participants in the LBM system, including the suppliers, dealers, haulers, auction markets, wholesalers, and live bird markets. The Colorado Live Bird Market System Program (LBMSP) ~~recognizes~~ **RECOGNIZES** three basic components of the LBM system: production units, distribution units, and LBMs.

The three primary goals of the Live Bird Market System Program are to:

1. Diagnose, control, and prevent avian influenza.
2. Help participants to improve biosecurity, sanitation, and disease control in their

operations.

3. Minimize the effects of AI outbreaks on the Colorado commercial poultry industry.

Part 2: Definitions and Abbreviations

- A2.1.** “Accredited Veterinarian” means ~~a veterinarian approved by the Administrator of United States Department of Agricultural (USDA), Animal and Plant Health Inspection Service (APHIS), in accordance with applicable federal regulations, to perform functions required by State-Federal industry cooperative programs~~ AN INDIVIDUAL WHO IS CURRENTLY LICENSED AND IN GOOD STANDING WITH A VETERINARY LICENSING BOARD OR AGENCY IN ANY STATE OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA TO PRACTICE VETERINARY MEDICINE AND IS ACCREDITED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, VETERINARY SERVICES.
- B2.2.** “Agar gel immunodiffusion (AGID) test” means the official serological test for AI in which precipitates are formed by a combination of nonspecific AI antigens and antibodies that diffuse through a gel. A positive reaction indicates exposure to AI virus, but does not indicate a specific subtype. Samples positive by AGID must be further tested and subtyped using the hemagglutination inhibition test. A final decision on the status of an AGID-positive flock should be based on further sampling and testing for the presence of virus through RRT-PCR or virus isolation.
- G2.3.** “AI” means avian influenza.
- D2.4.** “Animal health official” means an employee of or person under the direct supervision of the Colorado Department of Agriculture (CDA), Colorado State University (CSU) or USDA who has authority to carry out Live Bird Market System Program activities.
- E2.5.** ~~“APHIS” means the Animal and Plant Health Inspection Service.~~ “ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)” MEANS THE AGENCY IN THE UNITED STATES DEPARTMENT OF AGRICULTURE KNOWN AS THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE.
- F2.6.** “Approved laboratory” means a State, Federal, university, or private laboratory that has been approved by USDA, APHIS, Veterinary Services (VS), to perform any or all official Live Bird Market System Program tests for AI diagnosis.
- G2.7.** “Area Veterinarian in Charge (AVIC)” means the veterinary official of APHIS, VS, assigned by the Administrator to supervise and perform the official animal health programs of APHIS in the State or States concerned.
- H2.8.** “Auction market” means a business LOCATION where producers, dealers, wholesalers, and retailers meet to purchase, trade, or sell live birds.
- I2.9.** “Avian Influenza Approved Flock or Premises” means a flock or premises that complies with avian influenza individual bird testing or flock monitoring, as outlined in this rule.
- J2.10.** “CDA” means the Colorado Department of Agriculture.
- K2.11.** “Certified poultry technician (CPT)” means an individual who has been specially trained in poultry health monitoring and specimen collection by the State, and who is included on an official list of technicians certified by the State to perform inspections and specimen collections.
- L2.12.** “Cleaning and disinfection (C&D)” means THE METHODS USED TO DESTROY OR ELIMINATE AI ON one of the steps in response to an AI-positive premises that will eliminate AI from the premises.

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This requires thorough removal of organic material and debris, followed by treatment with the proper concentration of an agent effective in inactivation of AI virus.

M2.13. “Commingled flock” means poultry from multiple sources that has been assembled ~~INTO~~ **for** one or more ~~shipments-GROUPS~~.

N2.14. “Commission” means the Colorado Agricultural Commission.

O2.15. “Commissioner” means the Commissioner of the Colorado Department of Agriculture, or the ~~ec~~**C**ommissioner’s designee.

P2.16. “Distribution system” means ~~a~~ **a** businesses (such as wholesalers, dealers, haulers, and auction markets) engaged in the transportation and/or sale of poultry to LBMs. These are the links between production flocks and LBMs.

Q2.17. “Distributor” means any of the businesses or an individual working ~~in any of the businesses~~ within the distribution system serving the LBMs.

R2.18. “Enzyme-linked immunosorbent assay (ELISA)” means a type-specific serological screening test to determine exposure to AI virus.

S2.19. “Established flock” means poultry of the same species held together on one premises for at least 21 days or, at the discretion of the State ~~VETERINARIAN~~ **animal health official**, any group of poultry on one premises that has been segregated from another group for at least 21 consecutive days.

T2.20. “H5, H7 LPAI” means low ~~pathogenicity-PATHOGENIC~~ H5 and H7 subtypes of AI virus.

U2.21. “Hauler/trucker” means a business or individual that transports poultry from producer premises to another supplier premises, to another distributor, or to an LBM.

V2.22. “High pathogenicity avian influenza (HPAI) virus” means any influenza virus that kills at least 75 percent of 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation of 0.2 ml of a 1:10 dilution of infectious allantoic fluid; or any H5 or H7 influenza virus that has an amino acid sequence at the hemagglutination cleavage site compatible with HPAI; or any influenza virus ~~THAT IS NOT AN H5 OR H7 SUBTYPE AND THAT KILLS ONE TO FIVE CHICKENS AND GROWS IN CELL CULTURE IN THE ABSENCE OF TRYPSIN~~ **that grows in cell culture in the absence of trypsin. This is consistent with the World Organization for Animal Health (OIE) definition and the definition included in federal regulations.**

2.23 **“HOLD ORDER” MEANS A TEMPORARY ORDER ISSUED BY THE STATE VETERINARIAN WHEN AN INFECTIOUS OR CONTAGIOUS DISEASE IS SUSPECTED IN LIVESTOCK TO ISOLATE ANY SPECIFIC LIVESTOCK, PREMISES, COUNTY, DISTRICT, OR SECTION OF THE STATE; RESTRICT THE MOVEMENT OF LIVESTOCK; AND SPECIFY SANITARY MEASURES, PENDING COMPLETION OF TESTING.**

W2.24. “Infected premises” means a premises that houses a flock(s) that has been confirmed to be positive for AI virus, subtype H5 or H7, by an approved laboratory using an official test.

X2.25. “Live bird market (LBM)” means any facility that gathers live poultry to be slaughtered and sold onsite. ~~Other end-stage poultry markets in a participating State that are not “slaughter-only” markets will require development and approval of special biosecurity safeguards-~~

~~and inspections to assure that they meet LBMSPP Standards and are successful in the prevention and control of LPAI.~~

~~Y2.26.~~ “Live Bird Market System Program (LBMSPP)” means ~~ANY CDA-OPERATED SYSTEM~~ ~~the program operated through CDA, CSU Veterinary Diagnostic Laboratory and USDA~~ to control and reduce outbreaks of avian influenza virus in all components of the live bird markets system.

~~Z2.27.~~ “Live bird marketing system (LBM system)” means the LBM system that includes LBMs and their production and distribution systems.

~~AA2.28.~~ “Live haul” means a process and the personnel and equipment used in that process, in which live poultry are transported ~~to a different location~~ ~~FROM ONE LOCATION TO ANOTHER~~.

~~BB2.29.~~ “Lot” means a grouping of birds within a flock from a ~~NAIS-registered~~ premises, ~~THAT ARRIVE TOGETHER arriving to AT~~ a market at one specific time point.

~~GG2.30.~~ “Low pathogenic avian influenza (LPAI) virus” means any AI virus that does not meet the criteria for ~~HPAI high pathogenicity~~.

~~DD.~~ “~~National Animal Identification System (NAIS)~~” ~~is a program that will be used as the basis for bird identification under the LBMSPP.~~

~~EE2.31.~~ “National Veterinary Services Laboratories (NVSL)” means the USDA, APHIS, National Veterinary Services Laboratories, which is the national diagnostic reference laboratory for AI.

~~FF2.32.~~ “Positive flock” means a flock that has been confirmed to be positive for AI virus, subtype H5 or H7, ~~by an approved test from an approved laboratory. Specimens positive by the AGID test must be further tested by the hemagglutination-inhibition (HI) test and neuraminidase-inhibition (NI) test at the NVSL or an NVSL-approved laboratory. Final judgment on a seropositive flock will be based upon epidemiological data and additional serological and virus (RRT-PCR and virus isolation) testing. The official designation of a flock as infected with H5 or H7 will be made only by the State Veterinarian, following confirmation by the NVSL BY AN OFFICIAL TEST PERFORMED AT AN APPROVED LABORATORY. SPECIMENS THAT ARE FOUND TO BE POSITIVE BY THE AGID TEST MUST BE TESTED BY THE HEMAGGLUTINATION-INHIBITION (HI) TEST AND NEURAMINIDASE-INHIBITION (NI) TEST AT THE NVSL. THE FINAL DETERMINATION OF THE STATUS OF AN AI SEROPOSITIVE FLOCK WILL BE BASED ON EPIDEMIOLOGICAL DATA AND ADDITIONAL SEROLOGICAL AND VIROLOGICAL (RRT-PCR AND VIRUS ISOLATION) TESTING.~~

~~GG.~~ “~~Positive sample~~” means a diagnostic specimen that is: ~~(1) positive for AI virus, subtype H5 or H7, by RRT-PCR, by gene sequencing, or by virus isolation; and/or (2) positive for specific antibodies to AI virus, subtype H5 or H7, but not as a consequence of vaccination. Specimens positive for subtypes H5 and H7 must be confirmed by the NVSL or an NVSL-approved laboratory.~~

~~HH2.33.~~ “Poultry” means any species of domestic fowl (including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds) raised for food production or other purposes.

~~I2.34.~~ “Poultry dealers” means individuals in businesses or the businesses themselves concerned with trading birds in the LBM system, acquiring birds from multiple flocks and geographic areas for resale, ~~and/or~~ movement of live poultry between the production system and LBMs.

~~JJ2.35.~~ “Poultry waste” includes dead birds, feathers, offal, and poultry litter.

~~KK2.36.~~ “Premises identification number” means a ~~unique number obtained from NAIS and~~

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~~assigned by the State animal health official to an LBM, distributor, or production flock. The premises identification number consists of seven characters~~ **NATIONALLY UNIQUE NUMBER ASSIGNED BY A STATE, TRIBAL, OR FEDERAL ANIMAL HEALTH AUTHORITY TO A PREMISES THAT IS, IN THE JUDGMENT OF THE STATE, TRIBAL, OR FEDERAL ANIMAL HEALTH AUTHORITY, A GEOGRAPHICALLY DISTINCT LOCATION FROM OTHER PREMISES. THE PREMISES IDENTIFICATION NUMBER IS ASSOCIATED WITH AN ADDRESS, GEOSPATIAL COORDINATES, OR LOCATION DESCRIPTORS THAT PROVIDE A VERIFIABLY UNIQUE LOCATION. THE PREMISES IDENTIFICATION NUMBER MAY BE USED IN CONJUNCTION WITH A PRODUCER'S OWN LIVESTOCK PRODUCTION NUMBERING SYSTEM TO PROVIDE A UNIQUE IDENTIFICATION NUMBER FOR AN ANIMAL. IT MAY ALSO BE USED AS A COMPONENT OF A GROUP OR LOT IDENTIFICATION NUMBER.**

LL2.37. "Production or supplier flock" means the production facility or farm that is the origin of poultry offered for sale in an LBM.

MM2.38. "Qualified bird" means an AI-negative bird from a production unit with a unique premises identification number assigned by the State of origin. This bird will maintain its qualified status when only **licensed**/registered distributors are used between the production unit and the LBM. To maintain its qualified status, it also must not have been commingled with untested birds.

2.39 **"QUARANTINE" MEANS AN ORDER ISSUED BY THE COMMISSIONER OF AGRICULTURE OR HIS DESIGNEE WHEN TESTING HAS CONFIRMED THE PRESENCE OF AN INFECTIOUS OR CONTAGIOUS DISEASE IN LIVESTOCK, WHICH ORDER ISOLATES SPECIFIC LIVESTOCK , PREMISES, COUNTIES, DISTRICTS, OR SECTIONS OF THE STATE; RESTRICTS THE MOVEMENT OF LIVESTOCK; AND SPECIFIES SANITARY MEASURES.**

NN2.40. "Real-time reverse-transcriptase polymerase chain reaction (RRT-PCR)" means an official test to detect the RNA **of H5 or H7 subtypes** of AI virus.

OO2.41. "Registration" means the **PROCESS BY WHICH AN LBM PROVIDES TO CDA THE INFORMATION REQUIRED BY THESE RULES TO REGISTER WITH THE STATE AS AN LBM IN THE STATE** ~~requirement to conduct business in the LBM system. This consists of registration of facilities by the State, allowing for oversight of such facilities as recommended in these standards.~~

PP2.42. "Test certificate" means a certificate issued by a State agency based on negative AI test results from an approved laboratory. The certificate bears the unique premises number, test results, and other pertinent information.

QQ2.43. "USDA" means the United States Department of Agriculture

RR2.44. "Veterinary Services (VS)" means the division of APHIS charged with animal health activities within the United States.

SS2.45. "Wholesaler" means a business with a **permanent** facility that buys birds from producers, distributors, or auction markets, and then trades or resells them.

Part 3: Standards for Live Bird Markets

A.3.1. Live Bird Markets (**LBM**s)

13.1.1. Registration and education

a3.1.1.1. A LBM must be registered ~~by~~**WITH** the CDA and must comply with the requirements of the LBMSF. A unique premises identification number will be assigned by the CDA ~~through the National Animal Identification System-~~**(NAIS)**. Information required for an LBM to become registered are as follows:

- (1) 3.1.1.1.1.** Business name, address, and telephone number;
- (2) 3.1.1.1.2.** Owner's name, address, and telephone number;
- (3) 3.1.1.1.3.** Hours of operation;
- (4) 3.1.1.1.4.** Global Positioning System location;
- (5) 3.1.1.1.5.** Market capacity (number of birds held at the marketing location);
- (6) 3.1.1.1.6.** Other LBM facilities under the same ownership, including dealerships, bird transportation businesses, and commercial poultry operations; and
- (7) 3.1.1.1.7.** A list of all avian species marketed.

b3.1.1.2. As a LBMSF participant, the LBM must allow ~~access to~~ LBMSF inspectors and personnel **ACCESS TO** the facility and the birds in the facility during normal business hours for inspection and sample collection and for examination of market records.

c3.1.1.3. LBM owners or managers are responsible for having knowledge of all rules and regulations of the LBMSF and are required to provide the training necessary to accomplish the execution of this rule.

d3.1.1.4. All personnel that work in the market must be trained in biosecurity procedures as arranged by the owner/manager. Certificates of training will be maintained in personnel files.

3.1.2. Bird testing and recordkeeping

a3.1.2.1. Markets shall be responsible for verifying premises and flock identification and obtaining documentation of test-negative status of the flock at the time of receipt of the birds. If records are not available, the birds shall not enter the market.

b3.1.2.2. All birds entering the market will originate only from AI approved flocks and premises.

c3.1.2.3. Records for avian species shall include the date of entry, the premises-of-origin **NAIS** identification number with lot identifier, the number and species of birds in the lot, the distributor registration number and the date of sale.

d3.1.2.4. All records shall be maintained for a minimum of 12 months from date of entry of the bird(s)/flock into the market.

3.1.3. Market sanitation and biosecurity

a3.1.3.1. A biosecurity protocol shall be developed by the LBM and approved by the LBMSF. Employees shall be required to follow biosecurity protocols.

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Biosecurity protocols shall include, but not be limited to, the following minimum requirements:

~~i3.1.3.1.1.~~ Transfer of the birds from shipping crates/cages into the market shall take place in a designated transfer area/room at the periphery of the facility. This transfer area shall be cleaned and disinfected in between deliveries.

~~ii3.1.3.1.2.~~ Distributors or persons delivering live birds to the market shall deliver birds into the designated transfer area/room but shall not enter into the retail area of the market

~~iii3.1.3.1.3.~~ All market personnel entering the designated transfer area/room shall walk through a disinfectant foot bath/pad using an approved disinfectant.

~~iv3.1.3.1.4.~~ Crates/cages and other transport supplies shall not enter the retail market area.

~~v3.1.3.1.5.~~ Market crates and cages shall be constructed of plastic or metal. Wood crates and cages shall not be used to house birds in the market.

~~vi3.1.3.1.6.~~ Protocols shall provide detailed information on market cleaning and disinfection procedures.

~~vii3.1.3.1.7.~~ All sanitation and biosecurity protocols shall be in written form and be made available to all live bird market employees and upon request to LBMSM personnel.

~~b3.1.3.2.~~ LBM environments and crates shall be kept in clean and sanitary conditions at all times, as defined by the biosecurity protocol.

~~e3.1.3.3.~~ Once delivered to a LBM, birds shall be killed and processed before leaving the facility.

~~d3.1.3.4.~~ LBMs are required to undergo regular, periodic closures with depopulation and complete sanitation, cleaning and disinfection (C&D), and downtime. The closures should occur at least quarterly with a minimum of 24 hours of downtime. Closures shall be scheduled with the LBMSM at least two weeks prior to the event. The market must be inspected and approved by LBMSM personnel before being allowed to reopen.

~~e3.1.3.5.~~ ~~Poultry waste shall be placed in plastic bags, sealed, and disposed of daily according to the LBM protocol~~**POULTRY WASTE MUST BE CONTAINED IN A MANNER APPROVED BY AN ANIMAL HEALTH OFFICIAL TO PREVENT DISEASE TRANSMISSION WHILE IT IS AWAITING DISPOSAL BY A METHOD ACCEPTABLE TO THE JURISDICTION WHERE THE MARKET IS LOCATED.**

~~f3.1.3.6.~~ Birds from production units shall not be sold directly to LBMs unless the LBM owner or manager is also registered as a distributor, with the necessary LBMSM approval for protocols and equipment to ensure effective C&D of

conveyances and equipment.

3.1.3.7. OTHER END-STAGE POULTRY MARKETS THAT ARE NOT “SLAUGHTER-ONLY” MARKETS WILL REQUIRE DEVELOPMENT AND APPROVAL OF SPECIAL BIOSECURITY SAFEGUARDS AND INSPECTIONS TO ASSURE THAT THEY MEET LBMSP STANDARDS AND ARE SUCCESSFUL IN THE PREVENTION AND CONTROL OF AI.

3.1.4. Market surveillance

a3.1.4.1. LBMs and birds housed within the market may be tested for avian influenza virus by the LBMSP at any time, but they shall be tested as determined by the LBMSP personnel or at least quarterly.

b3.1.4.2. Specimens collected for testing may include swab samples collected from live birds or the environment within the LBM; swabs collected on arrival from birds, conveyances, and crates; blood samples from birds; and swabs or tissues from sick and dead birds detected in the LBM.

e3.1.4.3. LBMs shall notify LBMSP personnel of any increases in illness or mortality within 48 hours.

3.1.5. Market positives

a3.1.5.1. LBMs that test positive FOR AVIAN INFLUENZA VIRUS on RRT-PCR or virus isolation at an approved laboratory will undergo mandatory market closure by the LBMSP. Markets will be required to depopulate and perform C&D, ~~but may first be allowed up to 5 calendar days to sell down its bird inventory, if such action is deemed appropriate by the State Veterinarian.~~ No additional birds will be allowed to enter the LBM following the notification of positive status ~~and throughout the sell-down period.~~

b3.1.5.2. Before the LBM can reopen for business, it must pass inspection by LBMSP personnel. Environmental samples mayWILL be taken for testing at this time, ~~but the LBM may be allowed to reopen while it awaits environmental test results.~~ If results OF THAT TESTING are positive, the LBM will ~~again be required to close (with up to 5 days to permit sell-down, if appropriate) and will again~~ perform ADDITIONAL C&D procedures within the next 24 hours, followed by SUBSEQUENT inspection and retesting. NO FACILITY WILL REOPEN UNTIL ENVIRONMENTAL SAMPLES TEST NEGATIVE.

e3.1.5.3. When birds are found to be positive in the LBM or upon delivery into the market, an investigation will be initiated. This may require use of market records in order to conduct appropriate tracebacks to determine where the positives are occurring in the system.

B3.2. Poultry Distributors

3.2.1. Registration and education

a3.2.1.1. Poultry distributors (consisting of dealers, haulers, the live haul process, auction markets, and wholesalers) must be registered in each state in which they conduct business. This includes the states from which birds are acquired, as well as the states that have LBMs to which the birds are sold or delivered. The distributor's business premises will be given one unique identification number ~~through NAIS~~ in the state in which it is located. This identification number will

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be used when the distributor registers in other states. Information required for a distributor's license includes:

- ~~(1)~~ **3.2.1.1.1.** Business name, address, and telephone number;
- ~~(2)~~ **3.2.1.1.2.** Owner's name, address, and telephone number;
- ~~(3)~~ **3.2.1.1.3.** Hours of operation;
- ~~(4)~~ **3.2.1.1.4.** Global Positioning System location of premises or residence;
- ~~(5)~~ **3.2.1.1.5.** Bird capacity;
- ~~(6)~~ **3.2.1.1.6.** Other businesses under the same ownership in the LBM system, including other dealerships, bird transportation businesses, and commercial poultry operations; and
- ~~(7)~~ **3.2.1.1.7.** A list of all avian and nonavian species distributed.

d3.2.1.2. To register ~~to AS A BIRD TRANSPORTER~~ **transport birds** within the LBM system, distributors must agree to allow LBMSPP personnel and/or Federal animal health officials to have access to records upon request and to permit official inspections and testing of premises and equipment as required.

e3.2.1.3. Registration will not be issued until there has been an inspection and approval of the facility, its record system, and the C&D equipment that will be used.

d3.2.1.4. All personnel that work for the company must be trained in biosecurity by ~~S~~**s**tate or ~~F~~**f**ederal personnel or by a trained company representative. Certification of employee training must be maintained in the personnel files. This training protocol is to be developed and funded by USDA with input from State Veterinarians in participating ~~S~~**s**tates.

3.2.2. Bird testing and recordkeeping

a3.2.2.1. Distributors may only accept properly identified and properly documented qualified birds from test-negative flocks.

b3.2.2.2. Distributors must provide documentation and certification of negative test results with each delivery of birds.

e3.2.2.3. Distributors must comply with recordkeeping requirements. They must maintain records for 12 months of bird pickups and deliveries that include: copies of test certification, dates of pickup and delivery, locations, species, numbers of birds, and farm premises identification numbers that include lot identification. In addition, distributors must keep records of C&D of premises and/or conveyances. ~~A copy of the records form may be obtained from the office of the AVIC or State Veterinarian.~~

d3.2.2.4. Any indication noted by a distributor that paperwork has been altered or

that it misrepresents the sources or test status of birds coming into the LBM must be reported to ~~a Federal or THE~~ State ~~VETERINARIAN OR HIS DESIGNEE animal health official.~~

3.2.3. Distributor sanitation and biosecurity

a3.2.3.1. Distributor vehicles, bird-holding devices, and any premises where birds may be held must be clean and sanitary at all times.

b3.2.3.2. Documented biosecurity protocols, developed by the distributor and approved by the ~~S~~state, must be in place.

c3.2.3.3. Distributors must use state-approved all-season crate and conveyance washing equipment and present C&D documentation when obtaining birds from producers and from other distributors. Once emptied of birds, conveyances and coops must undergo C&D between all deliveries.

d3.2.3.4. Before the distributor returns to a farm after visiting an LBM, all cages, vehicles, and other equipment must undergo C&D.

e3.2.3.5. Distributors may not transport live birds or other live animals from LBMs.

3.2.4. Distributor surveillance

a3.2.4.1. Distributors will be subjected to random inspections by ~~S~~state or ~~F~~federal officials of the ~~S~~state in which they are located. These random inspections will be done **at least quarterly** to ensure that conveyances, crates, and facilities are clean and sanitary and that records are being kept according to LBMSR requirements.

b3.2.4.2. Distributors will be tested at least quarterly for LPAI virus. Testing may include facility environment, conveyances, crates, and birds, if present.

c3.2.4.3. Specimens of choice and the types of tests to be run for each are covered in Part 3.**1.4.2A.4.b.** of this document.

3.2.5. AI-positive distributions ~~s~~ units

a3.2.5.1. Distributors' facilities that test positive by RRT-PCR or virus isolation at an approved laboratory will undergo depopulation of any birds on the premises, followed by C&D.

b3.2.5.2. Environmental samples may be taken for testing if indicated.

c3.2.5.3. Any specimen testing positive at an approved laboratory will be submitted to the NVSL for virus isolation and further characterization of the virus. However, premises will be depopulated on the basis of the original positive RRT-PCR or virus isolation results and will not await the results of testing at the NVSL.

d3.2.5.4. A distributor that fails biosecurity inspections ~~and~~ or is positive on quarterly testing will have to undergo monthly inspections and testing until there have been 3 consecutive months of negative testing, at which time quarterly testing will resume.

e3.2.5.5. When birds are found to be positive within the distribution system, an

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investigation will be initiated. This may require use of distributor records in order to complete traceouts to determine where the positives occurred in the LBM system. State and Federal animal health officials and, if necessary, compliance personnel will work together with LBM personnel in the investigation.

C3.3. Production Units

3.3.1. Registration and education

3.3.1.1a. Production units shall obtain a unique premises identification numbers to be used for all business pertaining to the LBMs. ~~Premises identification numbers are assigned through NAIS.~~ Information required for the records include:

- (1) 3.3.1.1.1.** Business name, address, and telephone number;
- (2) 3.3.1.1.2.** Owner's name, address, and telephone number;
- (3) 3.3.1.1.3.** Global Positioning System location;
- (4) 3.3.1.1.4.** Premises capacity; and
- (5) 3.3.1.1.5.** Other bird and animal production or sales facilities, as well as dealerships and bird transportation operation, under the same ownership.
- (6) 3.3.1.1.6.** A list of all avian and non-avian species produced.

b3.3.1.2. To participate in the LBMSMP, production units shall allow LBMSMP personnel to have access to all records and equipment for inspections when requested. Testing may be conducted as indicated by the LBMSMP.

3.3.2. Bird testing and recordkeeping

a3.3.2.1. All birds provided to a distributor or directly to the LBM shall originate from an avian influenza monitored and approved premises and shall bear or be accompanied by identification to a premises of origin. The categories of production units and the testing requirements for each category are as follows:

- (1) — AI-monitored flock: is tested monthly for AI for at least 3 months—using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds. At least 30 birds per flock are tested monthly by an approved laboratory.**
- (2) — Established flock: has been maintained together for at least 21 days prior to sample collection with no additions to the flock. For an established flock to qualify for the first shipment into the LBM system or to requalify after any breaks in the monthly sample testing regimen, 30 birds must be tested by AGID or other approved procedure within 10 days prior to movement.**

- (3) ~~Commingle flock: is a group of poultry from multiple sources that has been assembled for one or more shipments. When untested birds are added to the flock, previous test reports are void and the flock must requalify as an established flock by waiting 21 days before resampling, and then following the protocol as for a nonmonitored flock.~~
- (4) ~~Nonmonitored flock: has not been on a program of monthly testing for at least 3 months. To qualify for sale in the LBM system, 30 birds in a nonmonitored flock must have been tested within 10 days of movement.~~

3.3.2.1.1. AI MONITORED FLOCK: TO BE CERTIFIED AS AN AI MONITORED FLOCK, A FLOCK MUST MEET THE FOLLOWING REQUIREMENTS:

3.3.2.1.1.1. THE GROUP MUST HAVE BEEN TOGETHER WITHOUT ANY ADDITIONS FROM NONTESTED OR NON-MONITORED FLOCKS FOR A MINIMUM OF 21 DAYS BEFORE TESTING AND NO BIRDS MAY BE ADDED BETWEEN THE TESTING DATE AND THE DATE THEY LEAVE THE FARM.

3.3.2.1.1.2. SAMPLES FROM 30 BIRDS, 3 WEEKS OF AGE AND OLDER FROM ALL PENS AND HOUSES ON THE PREMISES, SHALL BE COLLECTED BETWEEN 21 AND 30 DAYS AFTER THE PREVIOUS COLLECTION.

3.3.2.1.1.3. THE 30 BIRDS SELECTED FOR TESTING SHALL BE SELECTED RANDOMLY AND SHALL BE REPRESENTATIVE OF THE FLOCK (BIRDS OF TESTING AGE TESTED FROM ALL PENS AND HOUSES ON THE PREMISES).

3.3.2.1.1.4. THE FIRST TEST SHOULD BE CONDUCTED WITHIN 30 DAYS OF PLACEMENT EXCEPT FOR THE FOLLOWING:

3.3.2.1.1.4.1. FOR SEROLOGY, BLOOD COLLECTION FROM SILKIES AND OTHER SMALL BREEDS OF CHICKENS MAY BE DELAYED UNTIL THE BIRDS ARE 6 TO 8 WEEKS OF AGE.

3.3.2.1.1.4.2. FOR SEROLOGY, BLOOD COLLECTION FROM GUINEAS, CHUKARS, AND QUAIL MAY BE DELAYED UNTIL THE BIRDS ARE 5 TO 6 WEEKS OF AGE.

3.3.2.1.1.4.3. EGGS MAY BE SUBSTITUTED FOR BLOOD SAMPLES FROM QUAIL AND CHUKARS AFTER THEY START LAYING.

3.3.2.1.1.5. A FLOCK MUST TEST NEGATIVE FOR AI FOR 3 CONSECUTIVE MONTHS BEFORE IT IS CONSIDERED A MONITORED FLOCK IN GOOD STANDING. WHEN NEW BIRDS ARE ADDED TO THE PREMISES, BIRDS COMING FROM A SOURCE OF EQUAL OR HIGHER STATUS (FOR EXAMPLE, ANOTHER MONITORED FLOCK) ASSUME THE MONITORED FLOCK STATUS OF THE PREVIOUS FLOCK AND MUST BE TESTED ONCE TOGETHER AS A MONITORED FLOCK BEFORE MOVING INTO THE LBMS. CHICKS COMING DIRECTLY FROM AN NPIP AI CLEAN HATCHERY MUST BE TESTED ONCE AS PART OF A MONITORED

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FLOCK BEFORE MOVING INTO THE LBMS. IF THE ADDED BIRDS ARE FROM OTHER SOURCES, NOT EQUAL TO OR OF HIGHER STATUS, THE FLOCK MUST BE TESTED FOR 3 MONTHS CONSECUTIVELY (WITH NEGATIVE RESULTS) TO BE CONSIDERED A MONITORED FLOCK IN GOOD STANDING.

3.3.2.1.1.6. TO RE-QUALIFY FOR MONITORED FLOCK STATUS AFTER ANY BREAKS IN THE REQUIRED MONTHLY TESTING, 30 BIRDS MUST BE TESTED BY AN NVSL-APPROVED TEST PROTOCOL WITHIN 10 DAYS BEFORE THE DATE OF MOVEMENT INTO THE LBMS.

3.3.2.1.2. TESTED FLOCK: A FLOCK THAT HAS BEEN ESTABLISHED FOR A MINIMUM OF 21 DAYS WITH NO CONTACT WITH OTHER BIRDS AND NO BIRDS ADDED TO THE FLOCK DURING THIS TIME, AND FROM WHICH 30 BIRDS ARE RANDOMLY SAMPLED AND TESTED NEGATIVE FOR AI ACCORDING TO THE SPECIFIC REQUIREMENTS LISTED BELOW, WITHIN 10 DAYS BEFORE THE DATE OF MOVEMENT INTO THE LBMS. NO POULTRY MAY BE ADDED TO OR HAVE CONTACT WITH THIS FLOCK AFTER TESTING AND BEFORE MOVEMENT. IF THE FLOCK CONTAINS FEWER THAN 30 BIRDS, ALL BIRDS WITHIN THE FLOCK MUST BE TESTED.

3.3.2.1.2.1. SAMPLES FROM 30 BIRDS, 3 WEEKS OF AGE AND OLDER, FROM ALL PENS AND HOUSES ON THE PREMISES SHALL BE COLLECTED. EGGS MAY BE SUBSTITUTED FOR BLOOD SAMPLES FROM QUAIL AND CHUKARS AFTER THEY START LAYING.

3.3.2.1.2.2. THE 30 BIRDS FOR TESTING SHALL BE SELECTED RANDOMLY AND SHALL BE REPRESENTATIVE OF THE FLOCK.

3.3.2.1.2.3. FLOCK TEST RECORDS, AS WELL AS RECORDS OF BIRD TRANSFERS, MUST BE MAINTAINED AND MADE READILY AVAILABLE FOR INSPECTION FOR 12 MONTHS BY THE BIRD OWNER, MANAGER, OR PROGRAM PARTICIPANT AS APPROVED BY THE ANIMAL HEALTH AGENCY.

3.3.2.1.2.4. BIRDS LOADED FOR TRANSPORT TO A DISTRIBUTOR MUST BE IDENTIFIED BY PREMISES OF ORIGIN AND MUST CONTAIN AN APPROPRIATE DATE OF MOVEMENT OR LOT NUMBER THAT WILL DISTINGUISH THIS SHIPMENT FROM OTHERS. THIS INFORMATION MUST BE RECORDED ON THE TEST CERTIFICATE OR OTHER PAPERWORK IF A TEST CERTIFICATE IS NOT REQUIRED FOR MOVEMENT TO THE DISTRIBUTOR.

3.3.2.1.2.5. SEROPOSITIVE FLOCKS MUST BE QUARANTINED AND TESTED USING AN APPROVED VIRUS-DETECTION PROCEDURE AT THE NVSL.

3.3.2.1.2.6. PREMISES THAT HAVE RESULTS CONFIRMED AS POSITIVE FOR H5 OR H7 LPAI VIRUS MUST DEPOPULATE AND UNDERGO CLEANING AND DISINFECTION.

3.3.2.2. Samples for testing may be collected by LBMS personnel.

e3.3.2.3. Flock test records, as well as records of bird transfers, shall be maintained for 12 months. Birds loaded for transportation to a distributor shall be identified by premises of origin and shall contain an appropriate date or lot number that will distinguish this shipment from others. This information shall be recorded on the test certificate that will be provided to the distributor or LBM.

d3.3.2.4. Birds from production units shall not be sold directly to LBMs unless the flock owner or manager is also registered as a distributor, with the necessary LBMSPP approval for protocols and equipment to ensure effective C&D of conveyances and equipment.

e3.3.2.5. Premises with birds that test positive at an approved laboratory will be held according to CDA authority while results are being confirmed.

f3.3.2.6. Seropositive flocks must be quarantined and tested using AN APPROVED VIRUS-DETECTION PROCEDURE AT THE NVSL. ~~a virus-detection procedure. Birds such as quail, guineas, and other gallinaceous species will be tested by RRT-PCR or by virus isolation using tracheal swabs. Waterfowl will be tested by virus isolation of cloacal swabs.~~

g3.3.2.7. Premises that have results confirmed as positive for H5 or H7 LPAI virus MUST DEPOPULATE AND UNDERGO CLEANING AND DISINFECTION ~~shall be required to depopulate and undergo C&D. The premises shall then be inspected and tested by virus isolation. A negative environmental test result is required before restocking.~~

h3.3.2.8. Premises that have results confirmed as positive for non-H5/H7 LPAI shall be managed under the discretion of the State Veterinarian.

3.3.3. Sanitation and biosecurity

a3.3.3.1. Production unit facilities, conveyances, bird holding devices, and other equipment shall be clean and sanitary at all times.

b3.3.3.2. Biosecurity protocols shall be developed by the producer and be in place in all production units on the premises.

e3.3.3.3. Certification of employee training shall be maintained in the company personnel files.

d3.3.3.4. Producers shall have approved equipment available for C&D of premises, conveyances, and crates. They shall maintain records of C&D.

3.3.4. Producer surveillance

a3.3.4.1. Premises may be subjected to random inspections by LBMSPP personnel to ensure that premises, conveyances, and coops are clean and sanitary. Random samples may be collected for virus identification from birds or environment at the time of inspection.

b3.3.4.2. Records will be reviewed during site inspections.

3.3.5. LPAI-positive PRODUCTION facilities

a3.3.5.1. Any specimens positive for virus shall be submitted to the NVSL for virus

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isolation and characterization. The premises will REMAIN UNDER A HOLD ORDER TO RESTRICT POULTRY MOVEMENTS ~~be held~~ until results are obtained from the NVSL.

b3.3.5.2. Premises confirmed positive for H5 or H7 shall remain under quarantine, WHICH STOPS POULTRY MOVEMENTS, and be inventoried. Records will be examined, and all traceouts will be conducted. The premises will be depopulated and will undergo C&D.

e3.3.5.3. RRT-PCR or VI positives at LBMs and distribution facilities shall result in tracebacks to a supplier of origin by CDA or Federal personnel.

Part 4- LBM Rule Enforcement

- ~~A. The Commissioner or the commissioner's designee shall enforce the provisions of this rule.~~
- ~~B. Whenever the Commission has reasonable cause to believe a violation of this rule has occurred and immediate enforcement is deemed necessary, the Commission may issue a cease and desist order, which may require any person to cease violating any provision of this rule. Such cease and desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at such person's discretion, a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.~~
- ~~C. In the event that any person fails to comply with a cease and desist order within twenty-four hours, the Commission may bring a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of this rule.~~

Part 5- LBM Disciplinary actions - Denial of Registration

- ~~A. The Commission, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, restrict, or revoke any registration authorized under this rule if the applicant or licensee:~~
- ~~1. Has refused or failed to comply with any provision of rule or any lawful order of the Commissioner;~~
 - ~~2. Has refused to provide the Commissioner with reasonable, complete, and accurate information regarding the care of animals when requested by the Commissioner; or~~
 - ~~3. Has falsified any information requested by the Commissioner.~~

Part 6- LBM Civil penalties

- ~~A. Any person who violates any provision of this rule is subject to a civil penalty, as determined by the Commission. The maximum penalty shall not exceed one hundred dollars per violation.~~

- ~~B. — No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.~~
- ~~C. — If the Commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the Commissioner, the Commissioner may:~~
- ~~1. — Bring suit to recover the amount of the civil penalty plus costs and attorney fees by action in any court of competent jurisdiction; or~~
 - ~~2. — Refuse to renew any registration authorized under this rule that was issued to a person who has not paid the civil penalty.~~
- ~~D. — Before imposing any civil penalty, the Commissioner may consider the effect of such penalty on the operation registered in LBM program.~~

PARTS 4-6 RESERVED

Part 7: Statements of Basis, Specific Statutory Authority and Purpose

A7.1. Adopted: August 30, 2006 – Effective October 30, 2006

The statutory basis for this rule is §§35-50-101 et.seq., C.R.S. 2005 and specifically, §§ 35-50-105 (3)(h), C.R.S., 2005., powers and duties of the Commissioner.

The basis of this rule lies in the importance of maintaining the health of the poultry industry in Colorado, specifically, protecting the industry from the economic consequences of an outbreak of avian influenza (AI). Avian influenza can take two forms, a milder version referred to as “low pathogenic avian influenza” (LPAI). LPAI typically causes little or no clinical illness in poultry but results in decreased production and increased mortality. Additionally, LPAI H5 and H7 subtypes have been shown to possess the potential to mutate into the more ravaging version, referred to as “high pathogenic avian influenza” (HPAI). Historically, live bird markets have been proven to harbor LPAI.

The purpose of this rule is to identify necessary sanitary standards for live bird markets and to establish a surveillance and testing protocol that the live bird market system, including suppliers, dealers, haulers, auction markets, wholesalers, and live bird markets, must follow. The three primary goals of this rule include: (1) diagnose, control and prevent avian influenza; (2) help participants improve biosecurity, sanitation and disease control in their operations; and (3) minimize the effects of AI outbreaks on the Colorado commercial poultry industry.

7.2. ADOPTED NOVEMBER 9, 2016 – EFFECTIVE DECEMBER 30, 2016

STATUTORY AUTHORITY

THIS RULE IS AMENDED AND ADOPTED PURSUANT TO THE COMMISSIONER’S AUTHORITIES FOUND AT § 35-50-105, C.R.S., SPECIFICALLY, § 35-50-105(3)(A), (C), (F), (H), (I), (J), (L), AND (P), C.R.S.

PURPOSE OF CHANGES TO THE RULE

THE PURPOSE OF THIS RULE-MAKING IS TO UPDATE MATTERS RELATED TO THE IDENTIFICATION, CONTROL, AND SANITATION RELATED TO AVIAN INFLUENZA, BOTH LOW PATHOGENIC AND HIGHLY PATHOGENIC INFLUENZAS, IN BIRD PRODUCTION UNITS, BIRD DISTRIBUTION UNITS, AND LIVE BIRD MARKETS WITHIN COLORADO.

FACTUAL AND POLICY ISSUES

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

THROUGHOUT THE RULE, THE REVIEWERS UPDATED LANGUAGE TO BRING IT INTO CONFORMITY WITH NATIONAL DISEASE PREVENTION TERMS, DEFINITIONS, AND STANDARDS. CONCEPTS RELATED TO “PREMISES IDENTIFICATION” ARE UPDATED TO CONFORM TO THE NATIONAL STANDARD. AS WELL, MORE PRECISE INFORMATION RELATED TO AVIAN INFLUENZA IS ADDED TO PROVIDE CLARITY FOR USERS OF THE RULE.

IN AREAS WHERE TERMS THAT ARE IDENTIFIED AND DEFINED WITHIN THE ORGANIC ACT, § 35-50-101, ET SEQ., THE REVIEWERS ENSURED CONSISTENCY OF TERMS USED IN THE STATUTE AND IN THE RULE.

ADDITIONALLY, THE REVIEWERS FOUND IT NECESSARY TO PROVIDE GREATER CLARITY WITH REGARD TO BIRD TESTING AND RECORD-KEEPING OF PRODUCTION FACILITIES. THE RULE NOW PROVIDES THE STANDARDS NECESSARY IN A CLEARER MANNER FOR A PRODUCTION FACILITY AND ITS “AI MONITORED FLOCKS” AND “TESTED FLOCKS.”

FINALLY, THE REVIEWERS MODIFIED THE REGISTRATION SYSTEM BECAUSE THE PREVIOUS RULE HAD INCLUDED A SYSTEM THAT CREATED A REGISTRATION THAT EXTENDED BEYOND THE BOUNDS OF THE COMMISSIONER’S AUTHORITY WITH REGARD TO REGISTRATION, DENIAL OF REGISTRATION, AND A HEARING PROCESS FOR THAT REGISTRATION AND POSSIBLE DENIAL OF REGISTRATION. THIS RULE STILL REQUIRES REGISTRATION, BUT THE REGISTRATION THAT THIS RULE PROVIDES IS ONE BY WHICH A COVERED ENTITY REGISTERS WITH THE COMMISSIONER AND IS SUBJECT TO THE ENFORCEMENT AUTHORITIES OF THE STATUTE WITHOUT CREATING ADDITIONAL HEARING OPTIONS OR ADDITIONAL ENFORCEMENT AUTHORITIES.

SPECIFIC PURPOSE OF THIS RULEMAKING

THE REVIEWERS MADE GRAMMATICAL AND SYNTACTIC CHANGES TO PART 1, INCLUDING REMOVING ACRONYMS WHERE MORE SPECIFIC LANGUAGE WOULD CLARIFY THE INTENT AND UPDATING THE TERM “NATIONAL ANIMAL IDENTIFICATION SYSTEM” TO ITS CURRENT NAME, THE “USDA ANIMAL DISEASE TRACEABILITY RULE.”

WITHIN PART 2, THE DEFINITIONS SECTION, THE REVIEWERS CHANGED “ACCREDITED VETERINARIAN” AND “CLEANING AND DISINFECTION” TO MAKE THESE DEFINITIONS CONSISTENT WITH OTHER RULES FOR LIVESTOCK DISEASE ADOPTED BY THE COMMISSIONER. “HOLD ORDER” AND “QUARANTINE” ARE CHANGED TO BE CONSISTENT WITH HOW THOSE TERMS ARE USED WITHIN THE RULE’S ENABLING ACT. THE REVIEWERS ALSO UPDATED DEFINITIONS RELATED TO AVIAN INFLUENZA AND FLOCKS ASSOCIATED WITH AVIAN INFLUENZA TO ADD PRECISION AND CLARITY. FINALLY, THE REVIEWERS CHANGED “REGISTRATION” TO COMPORT WITH THE AUTHORITY THE COMMISSIONER HAS TO REQUIRE REGISTRATION.

CHANGES TO PART 3 INCLUDE CHANGES REGARDING WASTE AND UPDATED BIOSECURITY MEASURES FOR LIVE BIRD MARKETS. ADDITIONALLY, THE REVIEWERS EXPANDED PART 3.3 TO CLARIFY THE BIRD TESTING AND RECORD-KEEPING REQUIRED FOR PRODUCTION UNITS. THE REVIEWERS PROVIDE THIS CHANGE TO ENHANCE TESTING PROTOCOLS AND QUALIFYING STANDARDS FOR THE INDUSTRY TO DISTINGUISH A “MONITORED FLOCK” FROM A “TESTED FLOCK.” THIS CHANGE ALSO PERMITS THE REVIEWERS TO REMOVE THE “ESTABLISHED FLOCK” CATEGORY, SIMPLIFYING THE DISTINCTIONS.

THE REVIEWERS REMOVED PART 4 BECAUSE THE RULE’S ENABLING ACT CONTAINS THIS LANGUAGE. THERE IS NO NEED TO REPEAT IT IN RULE.

THE REVIEWERS REMOVED PART 5 BECAUSE THERE IS NO AUTHORITY FOR THE COMMISSIONER TO DENY OR GRANT REGISTRATION. RATHER, THE COMMISSIONER’S AUTHORITY EXTENDS TO DISEASE CONTROL AND RECORD-KEEPING OF THOSE FACILITIES THAT ARE REGISTERED WITH THE COMMISSIONER.

SIMILARLY, THE REVIEWERS REMOVED PART 6 BECAUSE THE RULE’S ENABLING ACT CONTAINS THE AUTHORITY FOR CIVIL PENALTIES FOR VIOLATIONS OF THE RULE OR OF THE ENABLING ACT. THERE IS NO NEED TO REPEAT IT IN THE RULE.

THE REVIEWERS HAVE RE-NUMBERED THE RULE TO CONTEMPLATE THE REMOVED SECTIONS AND TO BRING UNIFORMITY WITHIN THE RULE TO ITS NUMBERING CONVENTION.



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO LIVE BIRD MARKET RULE

8 CCR 1201-20

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 21, 2016
TIME: 1:30 p.m.
LOCATION: Colorado Department of Agriculture
San Juan Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to update matters related to the identification, control, and sanitation related to avian influenza, both low pathogenic and highly pathogenic influenzas, in bird production units, bird distribution units, and live bird markets within Colorado. Changes also include renumbering the rule to be consistent with other Department rules.

The statutory authority for these rules is § 35-50-105(3)(a),(c),(f),(h),(i),(j),(l), and (p), 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00451

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-4

Rule title

FERTILIZERS AND SOIL CONDITIONERS

Rulemaking Hearing**Date**

10/19/2016

Time

09:00 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to clarify reporting requirements; change dates to align the registration renewals with the tonnage reporting deadline; and update formatting to be consistent with other rules within the Department.

Statutory authority

§§ 35-12-104(1), 104(7) and 35-12-106(4) C.R.S.

Contact information**Name**

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Title

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COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Fertilizers and Soil Conditioners

8 CCR 1202-4

Part 1. LEGAL AUTHORITY

- 1.1 Title 35, Article 12, Colorado Revised Statutes.

Part 2. DEFINITIONS

- 2.1 These Rules incorporate the official terms as published in the 2008 Official Publication of the Association of American Plant Food Control Officials, Inc. (AAPFCO), incorporated herein by reference (later amendments not included), except as the Commissioner of Agriculture ("Commissioner") designates otherwise in specific cases.

Part 3. REGISTRATION

- 3.1 Each commercial fertilizer, soil conditioner, or plant amendment product shall be registered by the person whose name appears on the label before being distributed in this state. All registrations shall expire annually on ~~December~~ JANUARY 31. Applications for renewal of registrations must be submitted each year on or before that date.
- 3.2 Each manufacturing facility that produces commercial fertilizer custom mixes in this state must be registered as required in Section 35-12-104 (7), C.R.S. All registrations shall expire annually on ~~December~~ JANUARY 31. Applications for renewal of registrations must be submitted each year on or before such date.
- 3.3 Each manufacturing facility that produces compost in this state must be registered as required in Section 35-12-104(8) (a), C.R.S. All registrations shall expire annually on ~~December~~ JANUARY 31. Applications for renewal of registrations must be submitted each year on or before such date.
- 3.4 Each manufacturing facility in this state that produces compost shall register with the Commissioner except that:
- ~~(a)~~ 3.4.1 Producers of less than ten (10) tons of compost per calendar year shall not be required to register;
- ~~(b)~~ 3.4.2 Any facilities regulated under Section 14 of Part 1 of the Colorado Department of Public Health and Environment Regulations Pertaining to Solid Waste Sites and Facilities, 6 CCR 1007-2, shall not be required to register.
- 3.5 Only fertilizers containing essential plant nutrients derived from sources recognized by AAPFCO may be registered. Iron sucate may only be registered for use as an iron source for specialty fertilizers.

Part 4. DISTRIBUTION FEES - REPORTS

- 4.1 Each registrant shall file an affidavit annually with the Commissioner within forty-five (45) days

after January 1 each year that discloses the pounds or tonnage of commercial fertilizer, soil conditioner, or plant amendment sold or distributed in the state during the preceding twelve (12) month period.

4.1.1 IN ADDITION, EACH REGISTRANT SHALL REPORT THE COMPOSITION OF FERTILIZER AND THE COUNTY IN WHICH FERTILIZER WAS DISTRIBUTED BY THE REGISTRANT.

- 4.2 Such affidavit shall be ACCURATELY REPORTED AND submitted on the form (ELECTRONIC OR OTHERWISE) THAT IS furnished by the Commissioner, ~~and shall accurately report all information related to product distribution specified on the form.~~

Part 5. LABEL REQUIREMENTS

5.1 Fertilizer labels

The following information shall be displayed on the product label in a readable and conspicuous form:

(a)5.1.1 Product name

(b)5.1.2 Grade

(c)5.1.3 Guaranteed Analysis in the following format and order:

Guaranteed Analysis

Total Nitrogen (N) _____ %

_____ % Ammoniacal Nitrogen**

_____ % Nitrate Nitrogen**

_____ % Water Insoluble Nitrogen*

_____ % Urea Nitrogen**

_____ % (other recognized and determinable forms of Nitrogen)**

(d)5.1.4 Available Phosphate (P_2O_5) _____ %

(e)5.1.5 Soluble Potash (K_2O) _____ %

(f)5.1.6 (Other nutrients, elemental basis) _____ %***

(g)5.1.7 Directions for use sufficient to ensure the safe and effective use of the product that, at a minimum, specify:

(i)5.1.7.1 The type(s) of plant(s) for which the product is intended

(ii)5.1.7.2 The recommended application method(s) and rate(s)

(iii)5.1.7.3 Any warning or caution statements necessary to avoid harm to the target plant(s), or other plants or animals

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~~(h)~~**5.1.8** Net weight or mass, net volume of liquid or dry material, or count.

~~(i)~~**5.1.9** The date of manufacture, processing, packaging or repackaging or a code that permits the determination of the date; or if bulk, the shipment or delivery date.

~~(j)~~**5.1.10** The name and address of the registrant.

*If claimed or the statement "organic" or "slow acting nitrogen" or similar terms are used on the label

**If claimed.

***As prescribed by Rule 5.2

5.2 Plant Nutrients in addition to Nitrogen, Phosphorous, and Potassium

~~(a)~~**5.2.1** Other plant nutrients, when mentioned in any form or manner, shall be guaranteed only on an available elemental basis. Sources of the elements guaranteed and proof of availability shall be provided to the Commissioner upon request. The minimum percentages that will be accepted for registration are as follows:

<u>Element</u>	<u>Minimum %</u>
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.10
Zinc (Zn)	0.05

Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorous and potassium.

~~(b)~~**5.2.2** In determining the percentages of the plant nutrients guaranteed on the label the analytical methods specified in Section 6 shall be used, ~~except that for copper, iron, manganese, zinc and cobalt, only that which is in the Na₂ EDTA soluble form as determined by the analytical method in Rule 6 (c), or that which is in the water-soluble form determined by the analytical method in Rule 6 (d), whichever is~~

~~higher, may be guaranteed. However, if the source for iron is iron sucrate, this exception does not apply.~~

~~(e)5.2.3~~ Guarantees or claims for the above-listed plant nutrients are the only ones which will be accepted except that fertilizer guarantees may include other nutrients, recognized by AAPFCO. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request.

5.3 Slowly Released Plant Nutrients

~~(a)5.3.1~~ No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient(s).

~~(b)5.3.2~~ Types of products recognized by the Commissioner to have slow release properties include, but are not limited to, (1) water insoluble products, such as natural organics, urea form materials, urea-formaldehyde products, isobutylidene diurea, and oxamide; (2) coated slow release products, such as sulfur coated urea and other encapsulated soluble fertilizers; (3) occluded slow release products in which fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and (4) products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (mdu), dimethylenetriurea (dmtu), and dicyanodiamide (dcd).

~~(e)5.3.3~~ The term, "water insoluble", and "occluded slow release" are accepted as descriptive of these products, provided the manufacturer can demonstrate a testing program to substantiate the claim that is acceptable to the Commissioner.

~~(d)5.3.4~~ A laboratory procedure, acceptable to the Commissioner for evaluating the release characteristics of the product(s) must be provided by the manufacturer if requested by the Commissioner.

5.4 Soil Conditioner and Plant Amendment Labels

The following information must be displayed on the product label in a readable and conspicuous form:

~~(a)5.4.1~~ Net Weight or mass, net volume of liquid or dry material, or count.

~~(b)5.4.2~~ Product Name.

~~(e)5.4.3~~ Statement of composition including the name and percentage of each conditioning and amending ingredient identified by the name published in the 2008 Official Publication of the Association of American Plant Food Control Officials, Inc., incorporated herein by reference (later amendments not included). If no APPFCO name exists, the common or usual name shall be used.

~~(d)5.4.4~~ Total percent of other ingredients.

~~(e)5.4.5~~ Purpose of product.

~~(f)5.4.6~~ Directions for use sufficient to ensure the safe and effective use of the product that, at a minimum, specify:

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~~(i)~~5.4.6.1 The type(s) of plant(s) or soil(s) for which the product is intended.

~~(ii)~~5.4.6.2 The recommended application method(s) and rate(s).

~~(iii)~~5.4.6.3 Any warning or caution statements necessary to avoid harm to the target plants (if applicable), or other plants or animals.

~~(g)~~5.4.7 Name and address of the registrant.

~~(h)~~5.4.8 The date of manufacture, processing, packaging or repackaging or a code that permits the determination of the date; or if bulk, the shipment or delivery date.

5.5 Compost Labels

~~(a)~~5.5.1 The following information shall be displayed on the product label in a readable and conspicuous form:

~~(i)~~5.5.1.1 Product name.

~~(ii)~~5.5.1.2 Directions for use sufficient to ensure the safe and effective use of the product that at minimum specify:

~~(a)~~5.5.1.2.1 The type(s) of plant(s) or soil(s) for which the product is intended;

~~(b)~~5.5.1.2.2 The recommended application method(s) and rate(s); and

~~(c)~~5.5.1.2.3 Any warning or caution statements necessary to avoid harm to the target plants (if applicable), or other plants or animals.

~~(iii)~~5.5.1.3 Name and address of the manufacturer or distributor.

~~(iv)~~5.5.1.4 Net weight or volume.

~~(v)~~5.5.1.5 Additional analytical information, if supplied, shall be listed under the heading "typical analysis" and shall not be considered to be a guarantee.

~~(b)~~5.5.2 Compost distributed in bulk must be accompanied by a printed or written statement showing the pH level & soluble salt level in addition to the information required above.

~~(c)~~5.5.3 Any product labeled as compost must meet the following minimum standards:

~~(i)~~5.5.3.1 The product must contain carbon and nitrogen in a ratio of less than or equal to 18, as determined by the method specified in Rule 6.2.1 ~~(a)~~.

~~(ii)~~5.5.3.2 The product must have a SOLVITA Ammonia Test result of greater than or equal to 4, as determined by the method specified in Rule 6.2.2 ~~(b)~~.

~~(iii)~~5.5.3.3 The product must have a SOLVITA Carbon Dioxide test result of greater than or equal to 5, as determined by the method specified in Rule 6.2.2 ~~(b)~~.

Part 6 Analytical Methods

- 6.1 The methods of sampling and analysis for fertilizers and soil conditioners shall be those set forth in the 18th Edition of the Official Methods of Association of Official Analytical Chemists (AOAC) International, incorporated herein by reference (later amendments not included), provided that copper, iron, manganese, zinc and cobalt shall be analyzed using only the following methods:

~~(a)~~6.1.1 AOAC Official Method 965.09 Nutrients (Minor) in Fertilizers, Sample Preparation C (e) (2).

~~(b)~~6.1.2 AOAC Official Method 983.02 Potassium in Fertilizers.-

~~(c)~~6.1.3 AOAC Official Method 965.09 Nutrients (Minor) in Fertilizers, Sample Preparation C (a), Acid Extractable Iron. This method only applies to iron derived from iron sucate.

- 6.2 The methods for sampling and analysis of compost shall be those specified in Test Methods for the Examination of Composting and Compost, U. S. Composting Council Research and Education Foundation (CCREF), and United States Department of Agriculture (USDA) (TMECC, 2002) incorporated herein by reference (later amendments not included).

~~(a)~~6.2.1 The carbon : nitrogen ratio shall be determined using TMECC Method 04.02D/2002-04-07 for analyzing total carbon and total nitrogen content.

~~(b)~~6.2.2 The SOLVITA Carbon Dioxide and Ammonia test results shall be determined using TMECC Method 05.08-E/2002-04-07.

- 6.3 Investigational Allowances

~~(a)~~6.3.1 A commercial fertilizer shall be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedule, or if the overall index value of the fertilizer is below 98%:

<u>Guarantee percent</u>	<u>Nitrogen percent</u>	<u>Available Phosphoric acid percent</u>	<u>Potash percent</u>
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08

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22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

For guarantees not listed, calculate the appropriate value by Interpolation.

(b)6.3.2

Other elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

<u>ELEMENT</u>	<u>GUARANTEE</u>	<u>ALLOWABLE DEFICIENCY</u>
Calcium and Sulfur	1% and up	0.2 units + 5% of guarantee
Magnesium	0.5% and up	0.2 units + 5% of guarantee
Boron	.02% to 5%	.003 units + 15% of guarantee
	5.0% and up	Potash Schedule 3.5 (a)
Cobalt and Molybdenum	.0005% to 1.0%	.0001 units + 30% of guarantee
	1.0% to 4.0%	.2 units + 10% of guarantee
	4.1% and up	Potash schedule 3.5 (a)
Chlorine, Iron & Sodium	0.1% to 4.0%	.005 units + 10% of guarantee
	4.1% and up	Potash Schedule 3.5 (a)
Copper, Manganese, & Zinc	.05% to 4.0%	.005 units + 10% of guarantee
	4.1% and up	Potash Schedule 3.5 (a)

(e)6.3.3

The overall index value is calculated by comparing the commercial value guaranteed with the commercial value found. Unit values of the nutrients used shall be those referred to in Section 35-12-110, C.R.S. Overall index value-example of calculation for a 10-10-10 grade found to contain 10.1% total nitrogen (N), 10.2% available

phosphoric acid (P_2O_5), and 10.1% soluble potash (K_2O) Nutrient unit values are assumed to be \$3.00 per unit N, \$2.00 per unit P_2O_5 and \$1.00 per unit K_2O .

10.0 units N	X 3 =	30.0
10.0 units P_2O_5	X 2 =	20.0
10.0 units K_2O	X 1 =	<u>10.0</u>
Commercial value guarantee =		60.0
10.0 units N	X 3 =	30.3
10.2 units P_2O_5	X 2 =	20.4
10.1 units K_2O	X 1 =	<u>10.1</u>
Commercial value found =		60.8
Overall index value $60.8/60.0 \times 100=101.3\%$		

(d)6.3.4 Soil conditioner ingredients and plant amending ingredients shall be deemed deficient if found below an amount exceeding 0.2 unit + 5% of the guarantee.

(e)6.3.5 The above tolerances listed in **(a) 6.3.1.** and **(b) 6.3.2** are for single samples run in duplicate.

Part 7.0 ADULTERATION

7.1 Fertilizer

(a)7.1.1 Any product distributed as a fertilizer that contains guaranteed amounts of phosphates and/or micronutrients shall be deemed adulterated if it contains one or more metals in amounts greater than the levels of metals established by the following table:

<u>Metals</u>	<u>ppm per 1% P_2O_5</u>	<u>ppm per 1% Micronutrients¹</u>
1. Arsenic	13	112
2. Cadmium	10	83
3. Cobalt	136 ²	2228 ²
4. Lead	61	463
5. Mercury	1	6
6. Molybdenum	42	300 ²
7. Nickel	250	1,900
8. Selenium	26	180
9. Zinc	420	2,900 ²

¹ Micro-nutrients include secondary and micro plant nutrients. Secondary plant nutrients are calcium, magnesium, and sulfur. Micro

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plant nutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, nickel, sodium, and zinc.

² Only applies when not guaranteed.

~~(b)~~**7.1.2** To use the above table:

~~(i)~~**7.1.2.1** First:

~~(A)~~**7.1.2.1.1** For fertilizers with a phosphate guarantee but no micro-nutrient guarantee, multiply the percent guaranteed P_2O_5 in the product by the values in the table to obtain the maximum allowable concentration of each metal. The minimum value for P_2O_5 utilized as a multiplier shall be 6.0.

~~(B)~~**7.1.2.1.2** For fertilizers with one or more micro-nutrient guarantees but no phosphate guarantee, multiply the sum of the guaranteed percentages of all micro-nutrients in the product by the value in the appropriate column in the Table to obtain the maximum allowable concentration (ppm) of each metal. The minimum value for micro-nutrients utilized as a multiplier shall be 1.

~~(C)~~**7.1.2.1.3** For fertilizers with both a phosphate and a micro-nutrient guarantee, multiply the guaranteed percent P_2O_5 by the value in the appropriate column. The minimum value for P_2O_5 utilized as a multiplier shall be 6.0.

~~(ii)~~**7.1.2.2** Then multiply the sum of the guaranteed percentages of the micro-nutrients by the value in the appropriate column. The minimum value for micro-nutrients utilized as a multiplier shall be 1.

~~(iii)~~**7.1.2.3** Utilize the higher of the two resulting values as the maximum allowable concentration (ppm) of each metal.

7.2 Compost

~~(a)~~**7.2.1** Any product labeled and distributed as compost shall be deemed adulterated if it contains one or more metals in amounts greater than the levels of metals established by the following table:

<u>Metals</u>	<u>Maximum level mg/kg dry weight basis</u>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100

Zinc	2800

(b)7.2.2 Any product labeled and distributed as compost shall be deemed adulterated if it contains a pathogen concentration greater than either of the following levels:

(i)7.2.2.1 Fecal coliform in an amount greater than 1000 most probable number per gram of total solids (dry weight basis); or

(ii)7.2.2.2 Salmonella sp. bacteria in an amount greater than three (3) most probable number per four (4) grams of total solids (dry weight basis).

Part 8. MATERIAL INCORPORATED BY REFERENCE

All materials incorporated by reference into these Rules may be examined at any state publications depository library. For further information on how the incorporated materials may be obtained or examined, please contact the Technical Services Section Chief at the Division of Inspection and Consumer Services, Department of Agriculture, 2331 West 31st Avenue, Denver, Colorado 80211.

Part 9. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1971 to 1984 are no longer in the Department's files.

9.1 October 9, 2008 – Effective November 30, 2008

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act, Section 35-12-114, C. R. S.

PURPOSE:

The purpose of these Rules is to comply with the requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act to provide specific guidelines for the manufacture, labeling, and distribution of commercial fertilizers, soil conditioners, plant amendments, and compost.

These rules:

- Adopt the most current version of the official terms as published in the 2008 Official Publication of the Association of American Plant Food Control Officials (AAPFCO).
- Establish registration dates for commercial fertilizer, soil conditioner, and plant amendment products.
- Establish registration dates for fertilizer and compost manufacturers.
- Establish the due date for distribution (tonnage) reports.
- Establish minimum standards and labeling requirements for compost.

*Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.*

- Establish directions for use requirements for fertilizer products.
- Remove all references to agricultural liming materials. These references were originally incorporated into these Rules because they are included in the AAPFCO Model Rules and Regulations. Due to the alkaline nature of Colorado soils, lime is not used; therefore, regulations that pertain to these materials are not needed.
- Establish the level of concentration of certain metals that would deem fertilizer to be adulterated.
- Establish the level of concentration of certain metals and pathogens that would deem compost to be adulterated.
- Update sampling and laboratory analysis methods for fertilizers and soil conditioners.
- Establish the laboratory analysis method for iron sucrate.
- Establish sampling and laboratory analysis methods for compost.
- Update rules and remove outdated language.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent Rules are as follows:

1. On August 6, 2008, The Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act was amended by House Bill 08-1231.
 - a. HB 08-1231 requires the Department to set minimum standards for compost produced by those facilities that are not regulated by Colorado Department of Public Health and Environment (CDPHE).
 - b. The Department worked with compost industry stakeholders, CDPHE, and Colorado State University to develop compost minimum standards.
2. These new, revised rules are based upon national standard (model) regulations developed by AAPFCO, an organization comprised of state fertilizer regulatory officials. These rules promote standardization of fertilizer industry regulation amongst the states.
3. The Department met with fertilizer industry groups throughout the rule drafting process. The industry groups have indicated support for these Rules.

9.2 January 13, 2009 – Effective March 2, 2009

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act, 35-12-114, C.R.S.

PURPOSE:

The purpose of these rules is to add additional labeling requirements to fertilizer and soil conditioning labeling guidelines.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. Upon review of the recent amendments to these rules, filed with the Secretary of State on October 16, 2008, the Office of Legislative Legal Services (OLLS) requested additions to Rule 5.1 to conform labeling requirements for fertilizer products with those in section 35-12-105(1), C.R.S.
2. In addition to the changes requested by OLLS, the Department will add similar language to Rule 5.4 to conform labeling requirements for soil conditioners and plant amendments to those in section 35-12-105(3), C.R.S.

9.3 April 9, 2013 – Effective January 1, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of these permanent rule amendments is to amend Part 3.1 to change the expiration date for a fertilizer registration and amend Part 3.2 to change the expiration date for a fertilizer manufacturing facility registration from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

9.4 ADOPTED NOVEMBER 9, 2016- EFFECTIVE DECEMBER 30, 2016

STATUTORY AUTHORITY:

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THESE PERMANENT RULE AMENDMENTS IS SET FORTH IN § 35-12-104(1), § 35-12-104(7) AND § 35-12-106(4), C.R.S.

PURPOSE:

THE PURPOSE OF THESE PERMANENT RULE AMENDMENTS IS TO:

1. AMEND PART 4 TO CLARIFY THE REPORTING REQUIREMENTS
2. CHANGE THE DATE IN PARTS 3.1, 3.2, AND 3.3 TO ALIGN THE REGISTRATION RENEWALS WITH THE TONNAGE REPORTING DEADLINE.
3. UPDATE FORMATTING TO BE CONSISTENT WITH OTHER RULES WITHIN THE DEPARTMENT.

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

FACTUAL AND POLICY BASIS:

THE FACTUAL AND POLICY ISSUES PERTAINING TO THE ADOPTION OF THESE PERMANENT RULE AMENDMENTS ARE AS FOLLOWS:

- 1. THE PREVIOUS VERSION OF PART 4 WAS NOT SPECIFIC TO THE TYPES OF DATA REQUIRED TO BE REPORTED ON FERTILIZER DISTRIBUTION.**
- 2. CURRENTLY, FERTILIZER REGISTRANTS HAVE TO LOG INTO THE DEPARTMENT'S LICENSING SYSTEM AT SEPARATE TIMES OF THE YEAR TO COMPLETE THE REGISTRATION AND REPORTING PROCESS. THIS CAN BE BURDENSOME TO REGISTRANTS AND BE PRONE TO MISTAKES.**
- 3. AFTER CONSULTING WITH INDUSTRY STAKEHOLDERS, THE DEPARTMENT HAS PROPOSED TO SYNCHRONIZE ALL DEADLINES ASSOCIATED WITH THE LARGER REGISTRATION PROCESS TO MAKE THE PROCESS MORE EFFICIENT FOR REGISTRANTS.**



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Fertilizers and Soil Conditioners”

8 CCR 1202-4

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 19, 2016
TIME: 9:00 a.m.
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to clarify reporting requirements; change dates to align the registration renewals with the tonnage reporting deadline; and update formatting to be consistent with other rules within the Department.

The statutory authority for these rules is §§ 35-12-104(1), 104(7) and 35-12-106(4) 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00461

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-6

Rule title

RULES FOR COMMERCIAL FEED UNDER THE COLORADO FEED LAW, SECTIONS 35-60-101 THROUGH 115, C.R.S.

Rulemaking Hearing**Date**

10/19/2016

Time

09:15 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to change the date for registrations and the due date for small package distribution reports and fees to January 31st.

Statutory authority

§§ 35-60-103(1), 105(3)(a) and 105(4), C.R.S.

Contact information**Name**

Karen Lover

Title

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3038699004

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Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Rules for Commercial Feed Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S.

8 CCR 1202-6

Part 15. Commercial Feed Registration

No person shall manufacture commercial feed within the state or allow his or her name to appear on the label of a commercial feed as guarantor, without first registering with the Department as required by Sections 35-60-103 and 35-60-104, C.R.S. Such registration shall expire on ~~December~~ **JANUARY** 31st and may be renewed annually.

Part 16. Distribution Fees-Reports

- 16.1. A distributor who is subject to a tonnage distribution fee required by Section 35-60-105(1), C.R.S. shall file with the Commissioner, no later than January 31st each year, a statement that sets forth the number of net tons of commercial feeds distributed in the state.
- 16.2. A distributor who is subject to the distribution fee for small packages of ten pounds or less shall file with the Commissioner, no later than ~~December~~ **JANUARY** 31st each year, a list of all small package products of ten pounds or less that are distributed in this state.
- 16.3. A distributor who is subject to a tonnage distribution fee required by Section 35-60-105(1), C.R.S., and the distribution fee for small packages of ten pounds or less shall comply with both Parts 16.1 and 16.2 of these Rules.

Part 17. Statements of Basis, Specific Statutory Authority and Purpose

17.7. ADOPTED NOVEMBER 9, 2016- EFFECTIVE DECEMBER 30, 2016

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS SET FORTH IN § 35-60-103(1), § 35-60-105(3)(A), AND § 35-60-105(4), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

CHANGE THE DATE IN PART 15 AND PART 16.2 FOR REGISTRATIONS AND THE DUE DATE FOR SMALL PACKAGE DISTRIBUTION REPORTS AND FEES TO JANUARY 31ST.

FACTUAL AND POLICY BASIS

THE FACTUAL AND POLICY ISSUE PERTAINING TO THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS AS FOLLOWS:

- 1. CURRENTLY, FEED REGISTRANTS HAVE TO LOG INTO THE DEPARTMENT'S LICENSING SYSTEM AT SEPARATE TIMES OF THE YEAR TO COMPLETE THE REGISTRATION AND REPORTING PROCESS. THIS CAN BE BURDENSOME TO REGISTRANTS AND BE PRONE TO MISTAKES.**
- 2. AFTER CONSULTING WITH INDUSTRY STAKEHOLDERS, THE DEPARTMENT HAS PROPOSED TO**

SYNCHRONIZE ALL DEADLINES ASSOCIATED WITH THE LARGER REGISTRATION PROCESS TO
MAKE THE PROCESS MORE EFFICIENT FOR REGISTRANTS.



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

**“Rules for Commercial Feed Under the Colorado Feed Law, Sections
35-60-101 through 115, C.R.S.”**

8 CCR 1202-6, Parts 15, 16 and 17

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 19, 2016
TIME: 9:15 a.m.
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to change the date for registrations and the due date for small package distribution reports and fees to January 31st.

The statutory authority for these rules is §§ 35-60-103(1), 105(3)(a) and 105(4), 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00452

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-7

Rule title

RULES FOR PET FOOD UNDER THE COLORADO FEED LAW, SECTIONS 35-60-101 THROUGH 115, C.R.S.

Rulemaking Hearing**Date**

10/19/2016

Time

09:15 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to change the date for registrations and the due date for small package distribution reports and fees to January 31st.

Statutory authority

§§ 35-60-103(1), 105(3)(a) and 105(4), C.R.S.

Contact information**Name**

Karen Lover

Title

Executive Assistant

Telephone

3038699004

Email

karen.lover@state.co.us

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and ~~BOLD, SMALL CAP, DOUBLE UNDERLINE~~ for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Rules for Pet Food Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S.

8 CCR 1202-7

PART 16. COMMERCIAL FEED REGISTRATION

~~NO PERSON SHALL MANUFACTURE COMMERCIAL FEED WITHIN THE STATE OR ALLOW HIS OR HER NAME TO APPEAR ON THE LABEL OF A COMMERCIAL FEED AS GUARANTOR, WITHOUT FIRST REGISTERING WITH THE DEPARTMENT AS REQUIRED BY SECTIONS 35-60-103, C.R.S., AND 35-60-104. SUCH REGISTRATION SHALL EXPIRE ON ~~DECEMBER~~ JANUARY 31ST AND MAY BE RENEWED ANNUALLY.~~

PART 17. DISTRIBUTION FEES-REPORTS

- 17.1. A distributor who is subject to a tonnage distribution fee required by Section 35-60-105(1), C.R.S., shall file with the Commissioner, no later than January 31st each year, a statement that sets forth the number of net tons of commercial feeds distributed in the state.
- 17.2. A distributor who is subject to the distribution fee for small packages of ten pounds or less shall file with the Commissioner, no later than ~~DECEMBER~~ JANUARY 31st each year, a list of all small package products of ten pounds or less that are distributed in this state.
- 17.3. A distributor who is subject to a tonnage distribution fee required by Section 35-60-105(1), C.R.S., and the distribution fee for small packages of ten pounds or less shall comply with both Parts 17.1 and 17.2 of these Rules.

Part 18. Statements of Basis, Specific Statutory Authority and Purpose

18.1. Adopted April 10, 2001 – Effective May 30, 2001

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Feed Law, § 35-60- 109(1), C.R.S. (2000).

PURPOSE:

The purpose of these rules is to comply with the requirements of the Colorado Commercial Feed to provide specific guidelines for the manufacture, labeling and distribution of commercial feed.

These rules are designed to:

- Set standards for the correct labeling of livestock and pet food.
- Set standards for good manufacturing practices for medicated livestock feed.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. The Colorado Commercial Feed Law was repealed and reenacted effective January 1, 2000. That statute requires the Commissioner to adopt the Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials, Inc. AAFCO), as published in the official publication of such association.
2. These new, revised rules are based upon national standard (model) regulations developed by AAFCO, a nation-wide group of regulatory officials. They are specifically for the purpose of promoting standardization between states for the animal feed industry.
3. Over 30% of the states have adopted the AAFCO model regulations. These rules are widely accepted by Colorado and national feed companies. Adoption of these rules would help to ensure uniform labeling requirements.
4. The Department met with the Colorado Grain and Feed Association's (CGFA) Feed Committee throughout the rule drafting process. The CGFA supports these new rules and regulations.
5. Two sets of rules are needed, one for livestock feed, the other for pet food. Livestock feed rules are specific to matters regarding production, animal growth and weight gain, and use of medications in feed. Pet food rules employ separate criteria for complete and balanced nutrition and provide regulatory guidance for advertising and claims frequently found on pet food labels.

18.2. Adopted November 1, 2007 – Effective December 30, 2007

STATUTORY AUTHORITY

These amendments are proposed for adoption by the Commissioner pursuant to his authority in section 35-60-109(1), C.R.S.

PURPOSE

The purposes of these amendments are as follows:

- (a) To amend the name of the Act used in the Rules to correspond with the new name adopted under Senate Bill 07-207.
- (b) To amend the listing of guarantees from an "as fed" basis to an "as is" basis.
- (c) Modify the definition of "pet."
- (d) Update the references to the official publications of the Association of American Feed Control Officials (AAFCO) incorporated by reference to the 2007 version.
- (e) To add section 14 to contain the Statements of Basis, Specific Statutory Authority and Purpose.
- (f) To correct typographical errors.

FACTUAL BASIS

- (a) On May 22, 2007, the Colorado Commercial Feed Law was amended by Senate Bill 07-207. The title of the law was amended to the Colorado Feed Law.

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and ~~BOLD, SMALL CAP, DOUBLE UNDERLINE~~ for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- (b) The current rules require the guaranteed analysis to be listed on an “as fed” basis. The AAFCO national standard requires it to be listed on an “as is” basis.
- (c) The AAFCO national standard definition of “pet” means dog or cat.

18.3. ADOPTED FEBRUARY 11, 2015 – EFFECTIVE MARCH 30, 2015

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THESE PERMANENT RULE AMENDMENTS IS SET FORTH IN SECTION 35-60-109(1), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

1. EDIT PART 1 LEGAL AUTHORITY TO INCLUDE ALL RULEMAKING AUTHORITY IN 35-60, C.R.S.
2. UPDATE THE REFERENCES THROUGHOUT THE RULES TO THE OFFICIAL PUBLICATION OF THE ASSOCIATION OF AMERICAN FEED CONTROL OFFICIALS (AAFCO) INCORPORATED BY REFERENCE TO THE 2015 VERSION.
3. ADD PART 2.3 TO SPECIFY THE COMMODITIES THAT ARE EXEMPTED FROM THE DEFINITION OF “COMMERCIAL FEED”, AND TO DEFINE WHEN THAT EXEMPTION DOES NOT APPLY.
4. EDIT PART 2.15 AND 2.18 FOR CLARITY.
5. ADD PART 3.9 TO SPECIFY RAW PET FOOD LABELING REQUIREMENTS TO INCLUDE SAFE HANDLING DIRECTIONS ON THE LABEL.
6. AMEND PART 4.2.1 PRODUCT NAME REQUIREMENTS FOR PET FOODS TO GIVE MANUFACTURERS MORE FLEXIBILITY WHEN USING THE “95% RULE.”
7. AMEND PART 4.2.2 FOR CLARITY AND UNIFORMITY.
8. ADD PART 5.10 TO SPECIFY LABELING EXEMPTIONS FOR PET FOOD ITEMS MADE FROM ANIMAL SKIN AND/OR CARTILAGE TO ALLOW THESE PRODUCTS TO BE DISTRIBUTED WITHOUT A GUARANTEED ANALYSIS STATEMENT.
9. ADD PART 13 (ADULTERANTS), PART 15 (FALSE OR INCOMPLETE INFORMATION), PART 16 (COMMERCIAL FEED REGISTRATION), AND PART 17 (DISTRIBUTION FEES-REPORTS).
10. CORRECT TYPOGRAPHICAL ERRORS.
11. REFORMAT RULES TO MEET NEW RULEMAKING GUIDELINES.

FACTUAL AND POLICY BASIS

THE FACTUAL AND POLICY ISSUES PERTAINING TO THE ADOPTION OF THESE PERMANENT RULE AMENDMENTS ARE AS FOLLOWS:

1. THE PREVIOUS VERSION OF THESE RULES DID NOT INCLUDE THE RULEMAKING AUTHORITY UNDER SECTION 35-60-102(2), C.R.S.
2. NUMEROUS CHANGES TO THE AAFCO PUBLICATION HAVE OCCURRED SINCE THE PRINTING OF THE 2007 VERSION WHICH IS REFERENCED IN THE RULES. THIS CHANGE WILL MAKE OUR RULES MORE CONSISTENT WITH OTHER STATES’ FEED RULES.

3. THIS RULE NEEDED TO BE ADDED TO MAKE THE PET FOOD RULES A STAND-ALONE SET OF RULES.
4. RAW PET FOOD SAFE HANDLING LABELING REQUIREMENTS ARE NEEDED TO ENSURE THE SAFE USE OF THESE TYPE PRODUCTS.
5. WHEN THE RULE WAS ORIGINALLY DRAFTED, MANUFACTURERS TYPICALLY ONLY USED MEAT INGREDIENTS IN THE PRODUCT NAME. CURRENT PET FOOD PRODUCTS INCORPORATE MANY INGREDIENTS THAT, UNDER THE CURRENT RULE, CANNOT BE USED AS PART OF THE PRODUCT NAME. THIS CHANGE WILL ALLOW MANUFACTURERS MORE FLEXIBILITY WITH NAMING PRODUCTS.
6. THE INDUSTRY STANDARD FOR LABELING OF RAWHIDE PET TREATS DOES NOT INCLUDE A GUARANTEED ANALYSIS STATEMENT. THIS ELIMINATES THE NEED FOR NATIONAL DISTRIBUTORS TO RE-LABEL THEIR PRODUCTS.
7. PARTS 13, 15, 16 AND 17 WERE PREVIOUSLY SUB-RULES UNDER 1202-6 (RULES FOR COMMERCIAL FEED). PARTS 13, 15, 16, AND 17 HAVE BEEN COPIED FROM 8 CCR 1202-6 AND DUPLICATED IN 8 CCR 1202-7 (RULES FOR PET FOOD) IN ORDER TO MAKE THE PET FOOD RULES A STAND-ALONE SET OF RULES.
8. THESE AMENDMENTS INCORPORATE CHANGES AS A RESULT OF THE DEPARTMENT'S REGULATORY EFFICIENCY REVIEW PROCESS.

18.4. ADOPTED FEBRUARY 10, 2016- EFFECTIVE MARCH 30, 2016

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS SET FORTH IN SECTION 35-60-109(1), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

1. ADD PART 3.1.9 TO INCLUDE THE REQUIREMENT OF THE DATE OF MANUFACTURE, PROCESSING, PACKAGING, OR REPACKAGING OR A CODE THAT PERMITS THE DETERMINATION OF THE DATE TO BE INCLUDED IN THE LABEL.

FACTUAL AND POLICY BASIS

THE FACTUAL AND POLICY ISSUE PERTAINING TO THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS AS FOLLOWS:

1. THE DATE OF MANUFACTURE, PROCESSING, PACKAGING, OR REPACKAGING OR A CODE THAT PERMITS THE DETERMINATION OF THE DATE AS REQUIRED IN SECTION 35-60-106(1)(g), C.R.S., IS BEING ADDED TO THE RULE SO THAT THE RULE WILL CONTAIN THE COMPLETE REQUIREMENTS FOR LABELING A PET FOOD PRODUCT.

18.5. ADOPTED NOVEMBER 9, 2016- EFFECTIVE DECEMBER 30, 2016

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS SET FORTH IN § 35-60-103(1), § 35-60-105(3)(A), AND § 35-60-105(4), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

CHANGE THE DATE IN PART 16 AND PARTS 17.2 FOR REGISTRATIONS AND THE DUE DATE FOR SMALL PACKAGE DISTRIBUTION REPORTS AND FEES TO JANUARY 31ST.

THE FACTUAL AND POLICY ISSUE PERTAINING TO THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS AS FOLLOWS:

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

1. ~~CURRENTLY, FEED REGISTRANTS HAVE TO LOG INTO THE DEPARTMENT'S LICENSING SYSTEM AT SEPARATE TIMES OF THE YEAR TO COMPLETE THE REGISTRATION AND REPORTING PROCESS. THIS CAN BE BURDENSOME TO REGISTRANTS AND BE PRONE TO MISTAKES.~~
2. ~~AFTER CONSULTING WITH INDUSTRY STAKEHOLDERS, THE DEPARTMENT HAS PROPOSED TO SYNCHRONIZE ALL DEADLINES ASSOCIATED WITH THE LARGER REGISTRATION PROCESS TO MAKE THE PROCESS MORE EFFICIENT FOR REGISTRANTS.~~



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Rules for Pet Food Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S.”

8 CCR 1202-7, Parts 16, 17 and 18

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 19, 2016
TIME: 9:15 a.m.
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to change the date for registrations and the due date for small package distribution reports and fees to January 31st.

The statutory authority for these rules is §§ 35-60-103(1), 105(3)(a) and 105(4), 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00459

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-13

Rule title

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE
CUSTOM PROCESSING OF MEAT ANIMALS ACT

Rulemaking Hearing**Date**

10/19/2016

Time

09:00 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to add labeling and recordkeeping requirements for poultry processors; strike the word custom where applicable; add a definition for livestock; and update the numbering system for consistency with other Department Rules.

Statutory authority

§§ 35-33-104(1), 201(11), and 202, C.R.S.

Contact information**Name**

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Title

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COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act

8 CCR 1202-13

General and Specific Authority: C.R.S. § 35-33-104(1)

PART 1. DEFINITIONS AND CONSTRUCTION OF TERMS

- 1.01. As used in these rules, and as the context requires, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa.
- 1.02. Any term used in these rules that is defined in the Custom Processing of Meat Animals Act, §§ 35-33-101 through 35-33-407, inclusive, C.R.S. (hereinafter referred to as the "Act") shall have the meaning set forth for such term in the Act.
- 1.03. ~~The terms~~ **"dress," "dressing," and "dressed"** mean eviscerating, removing the hide or skin of a livestock animal, and/or otherwise preparing the animal's carcass for cutting and further processing.
- 1.04. ~~The term~~ **"large game animal"** means a large game animal within the scope of the term "game wildlife" defined in § 33-1-102(23), C.R.S.
- 1.5. "LIVESTOCK" MEANS THE SAME AS DEFINED IN § 35-1-102(6), C.R.S.**
- 1.056. ~~The term~~ **"mobile slaughtering unit"** means any conveyance that can be lawfully driven, pulled, or otherwise moved on or over any street, road, highway, or other right of way, outfitted with equipment and utensils, and used to slaughter, dress, and/or further process livestock from place to place, or to slaughter and/or dress livestock and transport any carcass of such livestock, or any part thereof to a ~~custom~~ **processing** facility for further processing. This definition includes, for example, trucks equipped with a hoist and a fully-enclosed work room where processing is done; and trucks equipped with a hoist and a separate, fully-enclosed trailer attached to such truck that contains a work room where processing is done.
- 1.067. ~~The terms~~ **"sanitize" and "sanitized"** mean to treat a clean surface with any of the following methods or substances:
- (1)~~1.7.1.~~ water at 180° F;
- (2)~~1.7.2.~~ a chlorine and water solution of:
- (i)~~1.7.2.1.~~ 100 parts of chlorine per million of water when applied by sponge or cloth;
- (ii)~~1.7.2.2.~~ 200 parts of chlorine per million of water when applied directly by spray; or
- (iii)~~1.7.2.3.~~ 50 parts of chlorine per million of water when used to soak the item in a

container for at least one minute; or

~~(3)1.7.3.~~ any substance intended to be used to sanitize equipment and/or utensils in a processing facility and labeled as approved by the United States Department of Agriculture.

PART 2. REQUIREMENTS FOR CUSTOM PROCESSING FACILITIES.

2.01. Except as provided in Part 3.01 below, any **custom** processing facility licensed under the Act shall comply with all of the requirements in this Part 2.

2.02. The following areas shall have a concrete floor or surface that is sloped and drained into a waste disposal system:

~~(i)2.2.1.~~ any holding pen; ~~;~~

~~(ii)2.2.2.~~ the entire length of any alley not more than twelve feet in length; ~~;~~ or

~~(iii)2.2.3.~~ up to twelve feet of any longer alley that leads directly, and is immediately adjacent to the area where livestock are slaughtered and dressed.

2.03. Any slaughtering or dressing must be done in a room separate from any room where other processing is done; provided, however, slaughtering or dressing may be done in the same room where cutting, wrapping and other processing of meat is done if:

~~(i)2.3.1.~~ the slaughtering or dressing is not done in such room at the same time cutting, wrapping, or any other processing of meat is done; and

~~(ii)2.3.2.~~ the room and all equipment and utensils used are thoroughly cleaned and sanitized after any slaughtering or dressing is done, and before any cutting, packing, or other processing of meat is done.

2.04. All floors in any room where processing is done or where meat is held in storage, other than a freezer, must be: drained into a waste disposal system; coved at the wall to prevent meat products, waste from processing, or any liquids from penetrating between any wall and floor, or under any wall; and constructed of and finished with durable, water-resistant materials that are capable of being readily and thoroughly cleaned.

2.05. The walls, ceilings, columns, and other structural parts of any room where processing is done or where meat is held in storage shall be constructed of and finished with durable, water-resistant materials that are capable of being readily and thoroughly cleaned.

2.06. Any container used in the **custom** processing facility for the disposal of waste generated from processing, other than a disposable waste container that is discarded at the end of the work day, must be constructed and finished with durable, water-resistant materials that are capable of being readily and thoroughly cleaned. All waste containers, including, without limitation, disposable waste containers, shall be limited to and clearly marked for such use, and maintained in a clean and sanitary condition.

2.07. Any doorway through which any meat product is transferred shall be wide enough so that there is no contact between the doorways and the meat product. Doors in such doorways must be constructed of either rust-resistant metal or other materials that are water-resistant, capable of being readily and thoroughly cleaned, and do not flake, chip, or splinter. If made of wood, all surfaces of such doors and all doorjamb must be securely clad with a rust-resistant metal, and be so affixed so as not to provide crevices for dirt or vermin, or be coated with a water-based

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epoxy coating intended for such use and labelled as approved by the United States Department of Agriculture.

- 2.08. Any rails used to transport meat product shall be located, and sufficient space shall be provided in all passageways so that meat product does not come into contact with walls, posts, or other structural parts of the **custom** processing facility, or with any containers or other things that may be located in the **custom** processing facility or transported through it.
- 2.09. Every **custom** processing facility must have a cooler and a freezer for holding or storing meat product under refrigeration.
- 2.10. All coolers must be large enough, and constructed, maintained and operated so that the meat product is hung or otherwise stored therein without contacting any interior surface of the cooler, and with sufficient space to permit inspection of the meat product. The refrigeration unit for any cooler must deliver sufficient refrigerated air to maintain the cooler at an ambient temperature of no more than 41° F.
- 2.11. All freezers must be large enough, and constructed, maintained and operated so that refrigerated air adequately flows under and around the meat product held or stored therein to maintain the required level of refrigeration. The refrigeration unit for any freezer must deliver sufficient refrigerated air to maintain the freezer at an ambient temperature consistent with the requirements in § 35-33-103(12), C.R.S.
- 2.12. All lighting fixtures must use safety shielded light bulbs in all areas where meat product is exposed, and provide ample illumination for all work areas.
- 2.13. All work table surfaces must be constructed of rust-resistant metal; provided, however, work table surfaces may be constructed of other durable, water-resistant, non-metal materials if they are free of cracks and are capable of being readily and thoroughly cleaned.
- 2.14. All equipment used in processing, including, but not limited to, saws, tenderizers, and meat grinders, shall be of such material and construction that they can be readily and thoroughly cleaned. Such requirements include, but are not limited to: being capable of disassembly for thorough cleaning; rust-resistant and free from painted surfaces in any area of the equipment that comes into contact with the meat product; supported by rust-resistant metal legs; and movable for cleaning. All pans, trays, and utensils used for processing shall also be constructed of rust-resistant materials that are capable of being readily and thoroughly cleaned.
- 2.15. The **custom**-processing facility must be equipped with a wash basin of adequate size for cleaning equipment and utensils. The wash basin must be: constructed of a rust-resistant metal capable of being readily and thoroughly cleaned; and equipped with hot and cold running, potable water delivered through a combination mixing faucet.
- 2.16. Each room where processing is done shall be equipped with a hand washing facility. The hand washing facility must be equipped with: a sink that is not hand operated; hot and cold running, potable water delivered through a combination mixing faucet; liquid or powdered soap delivered in a wall- or sink-mounted dispenser; an adequate supply of disposable, single-use sanitary towels in a wall-mounted dispenser; and a receptacle for used sanitary towels.

PART 3. REQUIREMENTS FOR **custom PROCESSING FACILITIES ENGAGED IN CUSTOM PROCESSING OF LARGE GAME ANIMALS.**

- 3.01. Any custom processing facility licensed under the Act engaged exclusively in processing large game animals that does not have possession of a carcass, or any part thereof, or any meat

product derived therefrom for more than four hours shall:

(i)3.1.1. comply with the requirements of Parts 2.04 through 2.08, inclusive, and 2.12 through 2.15, inclusive, of these rules, and Part 2.16 of these rules, except that the sink may be hand operated; and

(ii)3.1.2. deliver to the owner of the carcass at the time it is delivered to the custom processing facility for custom processing a receipt which includes the following information: the name, address, and telephone number of the owner of the carcass; the name, address, and telephone number of the processor; the date and time the carcass was received at the custom processing facility; a description of the large game animal; and the number of the Colorado Division of Wildlife tag (or similar tag issued by the appropriate government agency of another state if the large game animal was taken in such other state) affixed to the carcass. The processor shall maintain a copy of such receipt for a period of not less than two years from the date it is issued.

- 3.02. If the carcass of any large game animal, or any part thereof, or the meat product derived therefrom is in the possession of a **custom** processing facility for more than four (4) hours, the **custom** processing facility must comply with the requirements of Parts 2.04 through 2.16, inclusive, of these rules.
- 3.03. Any carcass of a large game animal delivered to a **custom** processing facility for custom processing must be tagged with a Colorado Division of Wildlife tag (or similar tag issued by the appropriate government agency of another state if the large game animal was taken in such other state) at the time of delivery.
- 3.04. Any carcass of a large game animal must be dressed in an enclosed room or area that is separate from the rest of the **custom** processing facility.

PART 4. REQUIREMENTS FOR MOBILE SLAUGHTERING UNITS

- 4.01. Mobile slaughtering units may not be regularly used at a fixed location so as to avoid compliance with the licensing and other requirements of the Act and Parts 2, 3, 5, and 6 of these rules for **custom** processing facilities.
- 4.02. The work room of a mobile slaughtering unit where processing is done must be fully-enclosed so as to keep out dust, dirt, and other contaminants. It must be equipped with a rail system for hanging carcasses that is constructed and installed to prevent any carcass from touching any exterior or interior surface of the work room. If the rail system extends outside the work room through any door, the door must be sealed around any rail when it is closed so as to prevent any dust, dirt, or other contaminants from entering the work room.
- 4.03. The work room of a mobile slaughtering unit where processing is done must be equipped with an operating refrigeration system that delivers refrigerated air to the interior of the work room at a temperature of no more than 38° F.
- 4.04. All dressed carcasses transported in a mobile slaughtering unit must be contained in the refrigerated work room of such unit. If hog carcasses are transported in a mobile slaughtering unit with the carcasses of any other species of livestock, the hog carcasses must be kept separate and prevented from touching the carcasses of such other livestock.
- 4.05. Any mobile slaughtering unit that is used to slaughter livestock and transport the slaughtered animal to a **custom** processing facility for dressing to be completed within two hours after slaughter must be equipped with an enclosure for transporting the animal. The enclosure may be part of a trailer attached to the hoist-equipped truck of the unit. The enclosure must be fully-

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enclosed so as to keep out dust, dirt, and other contaminants, and must be sealed to prevent spillage or leaking of any liquids from the slaughtered animal. Also, its interior surfaces must be constructed of durable, water-resistant materials that are capable of being readily and thoroughly cleaned.

- 4.06. The walls, ceilings, and other structural parts of the interior of a mobile slaughtering unit's work room must be constructed of and finished with durable, water-resistant materials that are capable of being readily and thoroughly cleaned. All joints must be sealed so as not to provide crevices for dirt or vermin. The floor of the work room must be coved at the walls to prevent meat products, waste from processing, or any liquids from penetrating between any wall and floor, or under any wall.
- 4.07. The mobile slaughtering unit must be equipped with an apparatus to deliver sufficient cold and hot potable water to wash equipment and utensils used in processing, and for use as a hand washing facility. The mobile slaughtering unit shall also be equipped with liquid or powdered soap in a wall- or sink-mounted dispenser, an adequate supply of disposable, single-use sanitary towels in a wall-mounted dispenser, and a receptacle for used sanitary towels.
- 4.08. All mobile slaughtering units shall be equipped with containers of sufficient size and number for transport and disposal of waste from processing. Such containers shall have secure lids, and be securely fastened to the mobile slaughtering unit so as to prevent any spillage of its contents. Such containers shall be constructed of durable, water-resistant materials that are capable of being readily and thoroughly cleaned.
- 4.09. The sanitary requirements in Part 5 of these rules shall apply to mobile slaughtering units to the extent such units have comparable facilities, equipment, and utensils.

PART 5. SANITARY REQUIREMENTS

- 5.01. Except as provided in Part 4.09 above, all ~~custom~~-processing facilities licensed under the Act shall comply with the requirements of this Part 5.
- 5.02. The exterior premises of any ~~custom~~-processing facility, including, without limitation, loading docks and other areas where vehicles are loaded and unloaded, and any driveways, alleys, yards, and pens, shall be kept in a clean and orderly condition and drained to prevent the accumulation of standing water.
- 5.03. All catch basins and similar features of any waste disposal system shall be maintained in a clean and orderly condition to prevent the accumulation therein of waste products and avoid the creation of offensive odors.
- 5.04. All rooms and other interior areas shall be free from any condition that could result in contamination of the meat product, including, without limitation, dirt, dust, or odors from catch basins, livestock pens, hide cellars, or any other source.
- 5.05. All rooms and other interior areas shall be thoroughly cleaned after each day's use. All equipment and utensils used for meat processing shall be thoroughly cleaned and sanitized:

~~(i)5.5.1.~~ each time there is a change in processing from raw pork **OR RAW POULTRY** to raw meat products of other species, or a change in processing from raw meat products to ready-to-eat meat products;

~~(ii)5.5.2.~~ after four hours of operation if the room where such equipment and utensils are used is at any time maintained at an ambient temperature of more than 50° F; and

~~(iii)~~**5.5.3.** after each working day's use. Any item of equipment or utensil must be thoroughly cleaned and sanitized after any event at or during which time contamination of such equipment or utensil may have occurred. All cleaned and sanitized equipment and utensils, when stored after use, shall be protected and stored so as to avoid contamination.

- 5.06. All waste products from processing shall be disposed of daily, or stored for later disposal in a manner that does not create any condition that could cause contamination, or otherwise adversely affect the wholesomeness or quality of any meat product, or generate offensive odors or other objectionable conditions.
- 5.07. Meat product must be stored on racks or shelves elevated at least two inches from the floor in any freezer, and at least six inches from the floor in any cooler. Such racks and shelves must be constructed of durable, rust- and water-resistant materials that are capable of being readily and thoroughly cleaned. No meat product shall be placed beneath any carcass. Any non-food products or supplies shall be stored in a storage room or area separate from any room or area where meat product is processed or stored, on racks or shelves elevated from the floor at least 12 inches, and constructed of the same kind of materials for the racks and shelves described above in this paragraph 5.07.
- 5.08. Before being placed in a cooler, any carcass must be cleaned and free from any hair, waste product, dirt, or anything else that could contaminate the meat.
- 5.09. If any large game animal is processed in any ~~custom~~ processing facility where other species of livestock is processed, all rooms, equipment, and utensils used in processing the large game animal shall be thoroughly cleaned and sanitized before they are used to process any such other livestock. The carcass and meat product of any large game animal shall at all times be kept separate and apart from the carcass and meat product of other species of livestock.
- 5.10. Every ~~custom~~ processing facility shall establish and maintain procedures for excluding and removing flies, rats, mice, and any other vermin from the interior premises of the ~~custom~~ processing facility.
- 5.11. All animals, other than those presented for processing, shall be excluded from the interior premises of a ~~custom~~ processing facility.

PART 6. LICENSE EXPIRATION DATE

- 6.1. The expiration date for a license to operate a ~~custom~~ processing facility shall be December 31.

~~PARTS 7 – 9. RESERVED~~

PART 7 POULTRY PROCESSING RECORDKEEPING

- 7.1. EVERY POULTRY PROCESSOR SHALL MAINTAIN RECORDS OF EACH CUSTOMER TRANSACTION, INCLUDING, AT A MINIMUM:**

7.1.1. THE DATE OF THE SLAUGHTER;

7.1.2. DATE OF SALE;

7.1.3. NAME AND ADDRESS OF THE BUYER;

7.1.4. A DESCRIPTION OF THE MEAT OR MEAT PRODUCTS PROCESSED, INCLUDING SPECIES AND

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QUANTITY; AND

7.1.5. THE NAME AND ADDRESS OF THE OWNER.

7.2. THE RECORDS MAINTAINED PURSUANT TO PART 7.1 SHALL BE KEPT FOR AT LEAST TWO YEARS AND MADE AVAILABLE TO THE COMMISSIONER ON DEMAND.

PART 8. POULTRY LABELING

8.1. POULTRY PROCESSED AT ESTABLISHMENTS EXEMPTED FROM LICENSING, PROCESSING LESS THAN 1,000 BIRDS PER YEAR, SHALL LABEL THE POULTRY TO INCLUDE:

8.1.1. THE STATEMENT "EXEMPT – P.L. 90-492";

8.1.2. DESCRIPTION OF THE MEAT OR MEAT PRODUCTS, INCLUDING SPECIES AND QUANTITY; AND

8.1.3. THE STATEMENT "THIS POULTRY WAS PRODUCED IN A FACILITY THAT IS NOT SUBJECT TO LICENSURE OR INSPECTION. THIS PRODUCT IS NOT INTENDED FOR RESALE."

8.1.4. SAFE HANDLING INSTRUCTIONS – LABELING MUST INCLUDE THE FOLLOWING TEXT:

SAFE HANDLING INSTRUCTIONS

SOME FOOD PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT IS MISHANDLED OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING INSTRUCTIONS.

KEEP REFRIGERATED OR FROZEN. THAW IN REFRIGERATOR OR MICROWAVE.

KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES (INCLUDING CUTTING BOARDS), UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.

COOK THOROUGHLY TO 165° F INTERNAL TEMPERATURE.

KEEP HOT FOODS HOT. REFRIGERATE LEFTOVERS IMMEDIATELY OR DISCARD.

8.1.5. PACK OR PROCESSING DATE; AND

8.1.6. NAME AND ADDRESS OF THE PROCESSOR.

8.2. POULTRY PROCESSED AT ESTABLISHMENTS LICENSED BY THE STATE, SHALL LABEL THE POULTRY TO INCLUDE:

8.2.1. THE STATEMENT "EXEMPT – P.L. 90-492";

8.2.2. DESCRIPTION OF THE MEAT OR MEAT PRODUCTS, INCLUDING SPECIES AND QUANTITY; AND

8.2.3. THE STATEMENT "THIS POULTRY PRODUCT IS EXEMPTED FROM USDA INSPECTION AND IS NOT INTENDED FOR RESALE. IT WAS PRODUCED IN A FACILITY THAT IS LICENSED BY THE COLORADO DEPARTMENT OF AGRICULTURE."

8.2.4. SAFE HANDLING INSTRUCTIONS – LABELING MUST INCLUDE THE FOLLOWING TEXT:

SAFE HANDLING INSTRUCTIONS

SOME FOOD PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT IS MISHANDLED OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING INSTRUCTIONS.

KEEP REFRIGERATED OR FROZEN. THAW IN REFRIGERATOR OR MICROWAVE.

KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES (INCLUDING CUTTING BOARDS), UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.

COOK THOROUGHLY TO 165° F INTERNAL TEMPERATURE.

KEEP HOT FOODS HOT. REFRIGERATE LEFTOVERS IMMEDIATELY OR DISCARD.

8.2.5. PACK OR PROCESSING DATE; AND

8.2.6. NAME AND ADDRESS OF THE PROCESSOR.

PART 9 RESERVED

PART 10. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

10.1. Adopted July 16, 2009 – Effective August 30, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rule Amendments is set forth in § 35-33-104(1), C.R.S. (2008), and § 35-33-206(3), C.R.S., as enacted in SB 09-117.

PURPOSE:

The purpose of these Permanent Rule Amendments is to adopt new rules pertaining to the Colorado Slaughter, Processing, and Sale of Meat Animals Act to comply with the amendments to the Act set forth in SB 09-117.

These Permanent Rule Amendments:

- a. Incorporate the Act's new short title wherever cited in the rules.
- b. Modify the terms "processing facility" to read "custom processing facility."
- c. Establish a license expiration date of June 30.
- d. Amend references to sections in the Act to refer to amended section numbers.
- e. Delete obsolete rule definition of "processing" which is now defined in the Act.
- f. Add a section to contain the statements of basis, specific statutory authority and purpose.
- g. Remove the rule contained under the Animal Industry Division section of the CCR at 8 CCR 1201-14 to the Inspection and Consumer Services Division section of the CCR with a new

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number of 8 CCR 1202-13 and a new rule title.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Slaughter, Processing and Sale of Meat Animals Act, which resulted in several legislative amendments to the Act enacted by SB 09-117, effective July 1, 2009, that:
 - a. Change the title of the Act to the Custom Processing of Meat Animals Act. These rules reflect the correct short title of the Act.
 - b. Specify that the Commissioner has jurisdiction only over meat processing facilities that perform custom processing. As used throughout the rules, the term “processing facility” is amended to read “custom processing facility” in order to clarify that jurisdiction is only over those facilities that perform custom processing.
 - c. Remove the license expiration date from the Act and require that the Commissioner establish the date in rule. These rules establish a license expiration date of June 30.
 - d. Amend some section numbers in the Act. These rules refer to the amended section numbers.
2. The Commissioner intends to adopt Emergency Amendments to the Rules on July 1, 2009 at 8 CCR 1201-14 in order to implement the changes to the Act made by the General Assembly in SB 09-117. These Permanent Rule Amendments will make permanent those Emergency Rule Amendments.

10.2. Adopted April 9, 2013 – Effective July 1, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of this permanent rule amendment is set forth in § 35-33-206(3) and § 35-1-107(5(a), C.R.S.

PURPOSE:

The purpose of this permanent rule amendment is to amend Part 6.1 to change the expiration date for a license to operate a custom processing facility from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of this permanent rule amendment are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

10.3. ADOPTED NOVEMBER 9, 2016-EFFECTIVE DECEMBER 30, 2016

STATUTORY AUTHORITY:

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THIS PERMANENT RULE AMENDMENT IS SET FORTH IN § 35-33-104(1) § 35-33-201(11), AND § 35-33-202, C.R.S.

PURPOSE:

THE PURPOSE OF THIS PERMANENT RULE AMENDMENT IS TO:

1. ADD LABELING AND RECORDKEEPING REQUIREMENTS FOR POULTRY PROCESSORS AND STRIKE THE WORD "CUSTOM" WHERE APPLICABLE.
2. ADD A DEFINITION FOR "LIVESTOCK".
3. UPDATE FORMATTING TO BE CONSISTENT WITH OTHER RULES WITHIN THE DEPARTMENT.

FACTUAL AND POLICY BASIS:

THE FACTUAL AND POLICY ISSUES PERTAINING TO THE ADOPTION OF THIS PERMANENT RULE AMENDMENT ARE AS FOLLOWS:

1. SENATE BILL 16-058 ALLOWS FOR POULTRY PROCESSERS, LICENSED OR EXEMPT, TO SELL POULTRY TO INDIVIDUALS SO LONG AS CERTAIN REGULATIONS REGARDING LABELING AND RECORDKEEPING ARE FOLLOWED. THESE REGULATIONS MUST BE DEFINED IN RULE BY THE COLORADO DEPARTMENT OF AGRICULTURE. THE POULTRY LABELING REQUIREMENTS CLOSELY FOLLOW STANDARD LABELING REQUIREMENTS FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE. ADDITIONAL INPUT FROM THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WAS INCORPORATED TO ENSURE REQUIREMENTS FOR POULTRY PROCESSERS COMPORT WITH STATE REGULATIONS FOR SIMILAR PROCESSING FACILITIES.



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act”

8 CCR 1202-13

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 19, 2016
TIME: 9:00 a.m.
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to add labeling and recordkeeping requirements for poultry processors; strike the word “custom” where applicable; add a definition for “livestock”; and update the numbering system for consistency with other Department Rules.

The statutory authority for these rules is §§ 35-33-104(1), 201(11), and 202, 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00457

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**

10/19/2016

Time

09:45 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to amend Part 2 to further clarify when substances or mixture of substances will be considered to be a pesticide subject to regulation under the Act.

Statutory authority

§ 35-9-118(2)(f), C.R.S.

Contact information**Name**

Karen Lover

Title

Executive Assistant

Telephone

3038699004

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Colorado Department of Agriculture

Plant Industry Division

Administration and Enforcement of the Pesticide Act

8 CCR 1203-1

Part 2. Status of products as pesticides.

~~A S~~ubstances or mixtures of substances will be considered to be ~~A~~ pesticides 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 products ~~s-are~~ is intended for use both as ~~A~~ pesticides 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 COMMERCIALY VALUABLE USE IN THE PRODUCT AS DISTRIBUTED OR SOLD OTHER THAN USE FOR A PESTICIDAL PURPOSE.

Part 20. Statements of Basis, Specific Statutory Authority, and Purpose

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.
6. RECENT AMENDMENTS TO THE RULES OF THE ENVIRONMENTAL PROTECTION AGENCY, UNITED STATES OF AMERICA 40 C.F.R. REQUIRES THE DEPARTMENT TO UPDATE ALL DATE REFERENCES IN THE PESTICIDE ACT TO THE MOST CURRENT VERSION.



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Administration and Enforcement of the Pesticide Act”

8 CCR 1203-1, Parts 2 and 20

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 19, 2016
TIME: 9:45 a.m.
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to amend Part 2 to further clarify when substances or mixture of substances will be considered to be a pesticide subject to regulation under the Act.

The statutory authority for these rules is § 35-9-118(2)(f), 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00460

Department

1200 - Department of Agriculture

Agency

1203 - Plant Industry Division

CCR number

8 CCR 1203-21

Rule title

QUARANTINE IMPOSED AGAINST ALL LIFE STAGES OF THE JAPANESE BEETLE (POPILLIA JAPONICA) AND HOSTS OR POSSIBLE CARRIERS OF JAPANESE BEETLE PURSUANT TO THE COLORADO PEST CONTROL ACT

Rulemaking Hearing**Date**

10/19/2016

Time

09:30 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to add several Colorado counties to the areas under quarantine; add an additional certification method for ornamental grasses; add an additional certification method to allow pest free nursery stock to continue to enter non-infested areas; and update formatting to be consistent with other rules within the Department.

Statutory authority

§ 35-4-110, C.R.S.

Contact information**Name**

Karen Lover

Title

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DEPARTMENT OF AGRICULTURE

Plant Industry Division

QUARANTINE IMPOSED AGAINST ALL LIFE STAGES OF THE JAPANESE BEETLE (POPILLIA JAPONICA) AND HOSTS OR POSSIBLE CARRIERS OF JAPANESE BEETLE PURSUANT TO THE COLORADO PEST CONTROL ACT

8 CCR 1203-21

PART 1.00 Quarantine Established.

A quarantine is hereby established pursuant to section 35-4-110 C.R.S. of the Colorado Pest Control Act against the pest known as Japanese beetle (*Popillia japonica*) a member of the family Scarabaeidae. In the larval stage this pest feeds on the roots of many plants and in the adult stage feeds on the flowers, foliage and fruit of many plants.

PART 2.00 Applicability of this Quarantine.

2.1. This quarantine applies to all persons:

2.1.1. ~~ww~~who import into Colorado any commodity covered in ~~section PART 4.00 below~~ from any of the areas under quarantine specified in ~~section PART 3.100 below~~.

2.1.2. **WHO TRANSPORT ANY COMMODITY COVERED IN PART 4 FROM ANY QUARANTINED COUNTIES IN COLORADO SPECIFIED IN PART 3.2 TO ANY AREA IN COLORADO NOT UNDER QUARANTINE.**

2.2. For purposes of this quarantine any individual, partnership, limited liability company, corporation, governmental agency or other legal entity that imports a commodity covered under this quarantine into Colorado shall be considered a producer of such commodity.

PART 3.00 Areas Under Quarantine.

3.1. The entire states of Alabama, Alaska, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, the Provinces of Ontario and Quebec, Canada.

3.2. **THE COLORADO COUNTIES OF ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, EL PASO, JEFFERSON, LARIMER, PUEBLO, AND WELD.**

PART 4.00 Commodities Covered.

4.1. All life stages of the Japanese beetle, including eggs, larvae, pupae, and adults; and the following hosts or possible carriers of Japanese beetle:

(a)4.1.1. Soil, growing media, humus, compost, and manure. Soil samples under a federal Compliance Agreement and commercially packaged soil, growing media, humus, compost, manure are exempt;

(b)4.1.2. All plants with roots with the exception of nursery produced container grown plants imported in containers with a diameter of 12 inches or less and the volume of the container is less than 750 cubic inches, except as provided in **section PART 4.00 (c).1.3**;

(e)4.1.3. All ornamental grasses and sedges regardless of container size are possible hosts;

(d)4.1.4. Grass sod;

(e)4.1.5. Plant crowns or roots for propagation (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection);

(f)4.1.6. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection); and

(g)4.1.7. Any other plant, plant part, article or means of conveyance when it is determined by the Colorado Department of Agriculture ("Department") to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation, by Japanese beetle.

PART 5.00 Restrictions-

5.1. All commodities listed in **section PART 4.00** are prohibited entry into Colorado **OR TRANSPORT** from the areas under quarantine specified in **section PART 3.00** unless they have the required certification. A listed commodity may be imported **INTO COLORADO OR TRANSPORTED** from an area under quarantine into Colorado provided such shipment fully conforms with the requirements of one of the following options and is accompanied by a certificate issued by an authorized state agricultural official at origin verifying compliance:

5.1.1. Japanese Beetle Nursery Trapping Program – **section PART 5.00 (a).2**;

5.1.2. Application of Approved Regulatory Treatments – **section PART 5.00 (c).3**;

5.1.2.1. Dip Treatments – B&B and Container Plants – **section PART 5.00 (c)(i)3.1.1**;

5.1.2.2. Pre-Harvest Soil Surface Treatments – **section PART 5.00 (c)(ii)3.2**;

5.1.3. Containerized Nursery Stock Accreditation Program – **section PART 5.00 (d)4**;

5.1.4. Shipment of Sod – **section PART 5.00 (e)5**;

5.1.4.1. Japanese Beetle Trapping – **section PART 5.00 (e) (i)5.1**;

5.1.4.2. Japanese Beetle Management. – **section PART 5.00 (e) (ii)5.2**.

5.1.5. Shipment of Ornamental Grasses – **section PART 5.00; (f)6**;

5.1.5.1. Japanese Beetle Trapping – **section PART 5.00 (f)(i);6.1**;

5.1.5.2. Japanese Beetle Management – **section PART 5.00 (f)(ii)-6.2**;

5.1.5.3. JAPANESE BEETLE FREE GREENHOUSE/SCREENHOUSE-PART 5.6.3.

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5.1.6. NURSERY CERTIFICATION BASED ON A SYSTEM APPROACH TO NURSERY CERTIFICATION (SANC) PART 5.7.

5.1.7. The documents of compliance must be kept for a minimum of three years.

(a)5.2. Japanese Beetle Nursery Trapping Program.

5.2.1. Regulated nursery stock produced in nurseries found to be free from Japanese beetle based on the nursery trapping program can be certified for shipment when accompanied by a certificate with the following Additional Declaration (AD): “The plants were produced in a nursery which was found to be free from Japanese beetle (*Popillia japonica*) based on a nursery trapping program.”

5.2.2. To be eligible for certification nursery sites must meet the following criteria:

5.2.2.1. The Japanese beetle-free zone shall be the nursery site per se. A nursery business may have more than one nursery site. Each site may have an independent regulatory status relative to Japanese beetle. It is the duty and responsibility of the nursery to maintain the integrity of the Japanese beetle free zones at all times.

5.2.2.2. To avoid a risk of transshipping Japanese beetle-infested commodities, only commodities certified to be free from Japanese beetle shall be introduced into the nursery.

5.2.2.3. The entire nursery site shall be surveyed using a detection trapping survey at the rate of 49 traps per square mile (1 trap per 13 acres). Traps should be evenly spaced throughout the trapping areas. There shall be a minimum of three (3) traps per site regardless of the size of the nursery site. Traps shall be baited with a lure consisting of a Japanese beetle food lure (phenyl-ethyl propionate:eugenol: geraniol [3:7:3 ratio]) and male sex pheromone, and renewed as often as necessary to maintain trapping efficacy. Traps shall be placed and/or monitored regularly by official regulatory authorities during the period of adult flight. Traps should be checked every two weeks. Records shall be maintained of trap monitoring and all Japanese beetle captures.

5.2.2.4. The survey shall be conducted annually during the adult flight period (June 1 – September 30). If no beetles are captured in the survey, the nursery site meets the criterion. If one or two beetles are captured, in total, from all traps set for the delimitation survey, the nursery may ship if in the judgment of the supervising state plant regulatory official in the exporting state, the detection represents an interception rather than a locally established population of Japanese beetle and that a delimitation survey as specified in the Nursery Site Survey for Japanese beetle is conducted in the following year. If no beetles are captured, in total, from all traps in the delimitation survey following a positive find, the nursery site may continue to ship.

(b) This section repealed in its entirety effective March 30, 2013.

(c)5.3. Application of Approved Regulatory Treatments.

5.3.1. A state certificate which lists and verifies the treatment used must accompany shipment

with the following Additional Declaration (AD):" The plants were treated to control Japanese beetle according to the criteria for shipment to category 2 states as provided in the Colorado Japanese Beetle quarantine."

(i)5.3.1.1. Dip Treatments - B&B and Container Plants including pot-in-pot production (drench application methods are acceptable only for ornamental grasses in containers less than 12 inches in diameter as provided in **section PART 5.6.2 (f)(ii)**).

5.3.1.2. All balled and burlapped, potted and containerized nursery stock with a rootball diameter of 32 inches or smaller are eligible for certification with this option. The potted or balled and burlapped stock must be dipped, in one of the insecticides listed in this **section PART 5.3.1.100 (c) (i) below**, so as to submerge the entire root ball and all growing media of the container or the root retaining materials into the solution. The submersion time must be a minimum of two (2.0) minutes or until complete saturation occurs, as indicated by the cessation of bubbling whichever time is longer. Upon removal from the solution the plants must be drained in an approved manner.

5.3.1.3. Plants must not be shipped before they are well drained and can be easily handled. Media must be at least 50° F at the time of treatment. The dip treatment targets Japanese beetle larval stages. Growing medium must be of moderate moisture content (not too wet or not too dry) so that pesticide will adequately penetrate the medium. Treatment must be applied between September 1 and April 15 in southern states and between September 1 and May 1 in the northern states as determined by the appropriate phytosanitary official in the exporting state. During the adult flight period all treated plants must be protected from re-infestation.

5.3.1.4. Chlorpyrifos (4E formulations labeled for dipping, including Dursban 4E). Apply at a rate of one-quarter (0.25) pound active ingredient (8 ounces per 100 gallons of water).

5.3.1.5. Bifenthrin (OnyxPro Insecticide- EPA Registration # 279-4269). Apply at a rate of 14.4 fl. oz per 100 gallons of water or 1 lb/gal.

(ii)5.3.2. Pre-Harvest Soil Surface Treatments.

5.3.2.1. Balled & burlapped or field-potted plants, harvested from production fields, must be treated, with one of the insecticides listed in this **section PART 5.3.200 (c) (ii) below**, before harvest using a band width six (6) inches wider than the actual root ball diameter to be dug. Do not allow the bands in adjacent rows to overlap. Apply May through July with a minimum of eighty-seven (87) gallons of water per acre.

5.3.2.1.1. Imidacloprid (Marathon 1% G – EPA Reg # 432-1329-59807 and 60WP- EPA reg # 432-1361-59807, Imida E-Pro – EPA Reg #81959-22, Quali-Pro Imicacloprid 2F – EPA Reg #53883-232-73220 and AM Tide Imidacloprid 2F – EPA Reg #83851-14). Follow label directions for Field and Forest Nursery applications. Review and adhere to Marathon label instructions regarding vegetation management and irrigation before and after application.

5.3.2.1.2. Imidacloprid + Cyfluthrin (Discus – EPA reg # 432-1392-59807). Use 17 fl. oz per 3,000 sq. ft.

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~~**5.3.2.1.3.**~~ Thiamethoxam (Flagship 0.22G – EPA reg # 153719-23-4 and Flagship 25WG- EPA reg # 100-955). Use 120 lb per acre or 13.8 lb per 5,000 sq. ft. (Flagship 0.22G) or 8 oz per acre using a minimum of 1.5 gal. of water per 1,000 sq. ft (Flagship 25WG).

~~**(d)5.4.**~~ Containerized Nursery Stock Accreditation Program.

~~**5.4.1.**~~ Containerized nursery stock can be certified if grown under all of the following conditions. Ornamental grasses and sedges, which have been identified as preferred hosts of Japanese beetle, will not be allowed certification under this program. Plants certified under this program must be accompanied by a certificate including the following (or an equivalent) Additional Declaration (AD): “The plants have been found to be free from Japanese beetle (*Popillia japonica*) on the basis of a container accreditation program.”

Conditions

~~**i5.4.1.1.**~~ Above Ground Containers.

~~**5.4.1.1.1.**~~ Only containers with a diameter of 16 inches or less and a volume less than 2646 cubic inches are allowed certification under the containerized Nursery Stock Accreditation program.

~~**5.4.1.1.2.**~~ Only artificial growing media or sterilized soil shall be used and plants for potting must be free of Japanese beetle.

~~**5.4.1.1.3.**~~ Potted plants shall be maintained on a material which serves as a suitable ground barrier for Japanese beetle, i.e. gravel, plastic, hard packed clay, etc.

~~**5.4.1.1.4.**~~ Certified lots shall be identified and segregated in a manner satisfactory to the phytosanitary official in the exporting state.

~~**5.4.1.1.5.**~~ All containers shall be maintained apparently free of weeds.

(Ornamental grasses and sedges will not be allowed certification under the Containerized Nursery Stock Accreditation Program as specified in **Section PART F6 below.**)

~~**ii5.4.1.2.**~~ Pot-in-pot production (production of nursery stock in containers (production pots) which are placed inside permanent in-ground containers – i.e. two containers one inside the other) may be certified to be Japanese beetle free under the Containerized Nursery Stock Accreditation Program if the following conditions are met:

~~**5.4.1.2.1.**~~ Only artificial growing media or sterilized soil shall be used and plants for potting must be free of Japanese beetle.

~~**5.4.1.2.2.**~~ The permanent in-ground container in which the production pot sits shall provide a ground barrier for Japanese beetle.

~~**5.4.1.2.3.**~~ The lip of the permanent in-ground container shall be placed so that 3 – 4 inches of container lip protrudes above the soil surface.

5.4.1.2.4. The surface area surrounding the pot-in-pot containers must be apparently weed free and be maintained with a thick layer (more than 3 inches) of woodchip mulch, gravel, or heavy grade landscape fabric between containers.

5.4.1.2.5. All containers shall be maintained apparently free of weeds and grasses.

5.4.1.2.6. The inner container shall not come in contact with soil and there must be air space between containers.

(Ornamental grasses and sedges will not be allowed certification under the Containerized Nursery Stock Accreditation Program as specified in **section PART F6 below.**)

(e)5.5. Shipment of Sod.

(i)5.5.1. Japanese Beetle Trapping.

5.5.1.1. Sod may be shipped to Colorado from the areas under quarantine specified in **section PART 3.00** from sites found to be Japanese beetle-free based on negative detection trapping (as with nurseries) and must be accompanied by a certificate with the following Additional Declaration (AD): "The turf was produced in a sod farm which was found to be free from Japanese beetle (*Popillia japonica*) based on a sod farm trapping program."

(ii)5.5.2. Japanese Beetle Management.

5.5.2.1. Sod may be shipped into Colorado from the areas under quarantine specified in **section PART 3.00** and must be accompanied by a certificate listing and verifying the treatment used and with the following Additional Declaration (AD): "The sod was treated to control Japanese beetle according to the criteria for shipment to category 2 states as provided in the Colorado Japanese Beetle quarantine."

5.5.2.2. Management activities include (all of the following must be performed):

5.5.2.2.1. Maintenance of a Japanese beetle adulticide program on the sod-farm periphery.

5.5.2.2.2. Removal of Japanese beetle attractive plant species from the immediate growing area (where practical).

5.5.2.2.3. Periodic verification of compliance by regulatory officials.

5.5.2.2.4. Documentation of insecticide treatments with products recognized as providing effective regulatory treatment against Japanese beetle. Sod shall be inspected in the presence of a regulatory officer to determine its freedom from Japanese beetle at the time of harvest (sod cutting). Colorado will accept sod from Japanese beetle infested areas if the sod is inspected and found to be free of Japanese beetle at the time of harvest (sod cutting) or if one of the following pesticide treatments are applied when larvae are most susceptible to treatment (avoid mowing turf until after sufficient irrigation or rainfall has occurred so that uniformity of the application will not be affected). Apply as a curative treatment between April 1 and July 31st. Applications must be followed by sufficient

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irrigation or rainfall within 24 hours to move the active ingredient through the thatch and into the root zone where grubs feed.

5.5.2.2.4.1. Chlorantraniliprole (Acelepryn- EPA reg #352-731). Use at a rate of 16 fl. oz per acre.

5.5.2.2.4.2. Clothianidin (Arena 50WDG – EPA reg # 59639-152 or 0.5G – EPA reg # 59639-156). Use a rate of 8 oz (Arena 50 WDG) or 50 lb (Arena 0.5 G) per acre.

5.5.2.2.4.3. Halofenozide (Mach 2 – EPA reg # 62719-471). Use a rate of three (3) quarts per acre (2.2 fl. oz per 1,000 sq. ft).

5.5.2.2.4.4. Imidacloprid (Merit 75 WP – EPA reg # 432-1314, Merit 75 WSP – EPA reg # 432-1318, Merit 2F –EPA reg # 432-1312). Use a rate of 8.6 oz per acre for Merit 75 formulations (4 level teaspoons per 1,000 sq. ft for Merit 75 WP; 1.6 oz (1 packet) per 8,250 sq. ft for Merit 75 WSP) and at a rate of 1.6 pints per acre for Merit 2 (0.6 fl. oz per 1000 sq. ft).

5.5.2.2.4.5. Thiamethoxam (Meridian 0.33G – EPA reg # 100-961, Meridian 25WG- EPA reg # 100-943). Use a rate of 80 lb per acre or 9.4 lb per 5,000 sq. ft for the Meridian 0.33G formulation and 17 oz per acre or 1.95 oz per 5,000 sq. ft for the Meridian 25WG formulation.

(f)5.6. Shipment of Ornamental Grasses

(i)5.6.1. Japanese beetle trapping (containerized or field potted ornamental grasses).

Ornamental grasses (regardless of container size) may be shipped to Colorado from the areas under quarantine specified in **Section PART 3.00** from sites found to be Japanese beetle-free based on negative detection trapping (as with nurseries) and must be accompanied by a certificate with the following additional declaration: “The ornamental grass was produced in a nursery which was found to be free from Japanese beetle (*Popillia japonica*) based on a nursery trapping program.”

(ii)5.6.2. Japanese beetle management (containerized ornamental grasses only-field potted ornamental grasses are not eligible for certification under this protocol).

5.6.2.1. Ornamental grasses may be shipped into Colorado from the areas under quarantine specified in **Section PART 3.00** and must be accompanied by a certificate listing and verifying the treatment used and with the following additional declaration: “The ornamental grass was treated to control Japanese beetle according to the criteria for shipment to Colorado as provided in the Colorado Japanese beetle quarantine.”

5.6.2.2. Management activities include (all of the following must be performed):

5.6.2.2.1. Maintenance of a Japanese beetle adulticide program on the nursery periphery.

5.6.2.2.2. Removal of Japanese beetle attractive plant species from the immediate growing area (where practical).

5.6.2.2.3. Periodic verification of compliance by regulatory officials in the exporting state.

5.6.2.2.4. Documentation of insecticide treatments with products recognized as providing effective regulatory treatment against Japanese beetle. Ornamental grasses shall be inspected in the presence of a regulatory officer in the exporting state to determine its freedom from Japanese beetle. Colorado will accept ornamental grasses from Japanese beetle infested areas if one of the following pesticide treatments are applied when larvae are most susceptible to insecticide application.

5.6.2.2.4.1. Drench treatments – plants in containers 12” diameter or smaller.

5.6.2.2.4.1.1. Imidacloprid (Marathon 1% G – EPA Reg # 432-1329-59807 and 60wp- epa reg # 432-1361-59807, Imida E-Pro – EPA Reg # 81959-22, Quali-Pro Imidacloprid 2F – EPA Reg # 53883-232-73220 and AM Tide Imidacloprid 2F – EPA Reg # 83851-14. Follow label directions.

5.6.2.2.4.1.2. Bifenthrin (Talstar select insecticide, Onxypro insecticide). Apply as a drench, approximately four (4) fl. oz. of tank mix per six (6) inches or container diameter.

5.6.2.2.4.1.3. Thiamethoxam (Meridian 25 wg). Apply as a partial drench (1/3 of full drench volume) at a rate of 1.95 oz. in 17 gal. water.

5.6.2.2.4.1.4. Potting media used must be sterile and soilless. Containers must be clean. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. Treat just before Japanese beetle flight season (June 1 or as determined by the appropriate phytosanitary official in the exporting state.) Apply tank mix as a drench to wet the entire surface of the potting media. Avoid excessive irrigation following treatment to reduce leaching of active ingredient. During the adult flight season, as determined by the appropriate phytosanitary official in the exporting state, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection. If the containers are exposed to a second flight season they must be retreated.

5.6.2.2.4.2. Dip treatments – container plants 32” in diameter or smaller:

5.6.2.2.4.2.1. Chlorpyrifos (4E formulations labeled for dipping including Dursban 4E). Apply at a rate of one-quarter (0.25) pound active ingredient (8 ounces per 100 gallons

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of water).

5.6.2.2.4.2.2. Bifenthrin (Onyxpro insecticide – EPA Reg # 279-4269). Apply at a rate of 14.4 fl. oz. per 100 gallons of water or 1lb/gal.

5.6.2.2.4.2.3. The potted stock must be dipped so as to submerge the entire root ball and growing media of the container or the root retaining materials into the solution. The submersion time should be a minimum of two (2.0) minutes and until complete saturation occurs, as indicated by the cessation of bubbling.

5.6.2.2.4.2.4. Plants should not be shipped before they are well drained and can be easily handled. Media must be at least 50° F at the time of treatment. The dip treatment targets Japanese beetle larval states. Growing medium must be of moderate soil moisture content (not too wet or not too dry) so that pesticide will adequately penetrate the medium. Treatment must be applied between September 1 and April 15 in southern states and between September 1 and May 1 in northern states as determined by the appropriate phytosanitary official in the exporting state. During the adult flight period all treated plants must be protected from re-infestation.

5.6.3. PRODUCTION IN AN APPROVED JAPANESE BEETLE FREE GREENHOUSE/SCREENHOUSE.
ORNAMENTAL GRASSES (REGARDLESS OF CONTAINER SIZE) MAY BE SHIPPED TO COLORADO OR TRANSPORTED FROM THE AREAS UNDER QUARANTINE SPECIFIED IN PART 3 FROM SITES FOUND TO BE JAPANESE BEETLE-FREE BASED ON PRODUCTION IN AN APPROVED JAPANESE BEETLE FREE GREENHOUSE/SCREENHOUSE AND MUST BE ACCOMPANIED BY A CERTIFICATE WITH THE FOLLOWING ADDITIONAL DECLARATION: “PRODUCTION IN AN APPROVED JAPANESE BEETLE-FREE GREENHOUSE/SCREENHOUSE.” THE REGULATED ARTICLE MUST BE MAINTAINED WITHIN THE GREENHOUSE/SCREENHOUSE DURING THE ENTIRE ADULT FLIGHT PERIOD; DURING THE ADULT FLIGHT PERIOD THE GREENHOUSE/SCREENHOUSE MUST BE MADE SECURE SO THAT ADULT JAPANESE BEETLES CANNOT GAIN ENTRY.

5.7. NURSERY CERTIFICATION BASED ON A SYSTEMS APPROACH TO NURSERY CERTIFICATION (SANC)

5.7.1. REGULATED NURSERY STOCK PRODUCED IN NURSERIES FOUND TO BE FREE FROM JAPANESE BEETLE BASED ON A SYSTEMS APPROACH CAN BE IMPORTED INTO COLORADO OR TRANSPORTED FROM THE AREAS UNDER QUARANTINE SPECIFIED IN PART 3 WHEN CERTIFIED BY THE STATE OF ORIGIN’S DEPARTMENT OF AGRICULTURE AND ACCOMPANIED BY A CERTIFICATE WITH THE FOLLOWING ADDITIONAL DECLARATION (AD): “THE PLANTS WERE PRODUCED IN A NURSERY THAT WAS FOUND TO BE FREE FROM JAPANESE BEETLE (POPILLIA JAPONICA) BASED ON A SANC PROGRAM.”

5.7.2. TO BE ELIGIBLE FOR SANC CERTIFICATION UNDER THIS PROVISION NURSERY SITES MUST MEET THE FOLLOWING CRITERIA:

5.7.2.1. ONLY ARTIFICIAL GROWING MEDIA OR STERILIZED SOIL SHALL BE USED FOR POTTING; FIELD DUG PLANTS MUST BE FREE OF JAPANESE BEETLE.

5.7.2.2. THE NURSERY MUST ENTER INTO A SANC COMPLIANCE AGREEMENT THAT IS APPROVED BY THE COLORADO DEPARTMENT OF AGRICULTURE.

5.7.2.3. THE COMPLIANCE AGREEMENT MUST IDENTIFY CRITICAL CONTROL POINTS AND APPROPRIATE BEST MANAGEMENT PRACTICES (BMPs) FOR EACH CONTROL POINT MUST BE MUTUALLY AGREED UPON BETWEEN THE NURSERY AND THE COLORADO DEPARTMENT OF AGRICULTURE.

5.7.2.4. THE CERTIFIED SANC NURSERY MUST BE INSPECTED QUARTERLY BY DEPARTMENT OF AGRICULTURE IN THE STATE IN WHICH THE NURSERY IS LOCATED TO CONFIRM COMPLIANCE.

PART 6.00 Exceptions:

Upon written request, and upon investigation and finding that unusual circumstances exist justifying such action, the **COLORADO** Department of **AGRICULTURE** may issue a permit allowing entry into this state of commodities covered without meeting the requirements of **section PART 5.00**. However, all conditions specified in the permit shall be met before such permit will be recognized.

PART 7.00 Privately-owned house plants:

Notwithstanding the requirements of **section PART 5.00**, the Department may allow privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle to be brought into this state without meeting the requirements of **section PART 5.00**. Contact the Colorado Department of Agriculture for information: Director, Plant Industry Division, Colorado Department of Agriculture, **700 Kipling Street Suite 4000, Lakewood, Colorado 80215-8000, telephone: 303/239-4140, FAX: 303/239-4177.**

PART 8.00 Violation of Quarantine:

All covered commodities described in **section PART 4.00** of this rule found to be in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner. Removal from the state, destruction or treatment of such commodity shall be performed at the expense of the producer, or their duly authorized agent.

Any violations of this quarantine are subject to a civil penalty, as determined by the Commissioner. Pursuant to Section 35-4-114.5, C.R.S., the maximum penalty shall not exceed one thousand dollars per violation. Each day the violation continues shall constitute a separate violation.

PART 9.00 Inspections and Investigations:

The Division of Plant Industry of the **COLORADO** Department of Agriculture shall conduct any inspections necessary to ensure compliance with this quarantine and investigations of all alleged violations of the quarantine. In accordance with Section 35-4-112 C.R.S. Except as provided in Section 35-4-107, the Commissioner or his designees are authorized, upon consent of the producer or its authorized agent or upon obtaining an administrative search warrant, to enter upon or into any premises, land, buildings, or other places of business during reasonable business hours for the purpose of carrying out the provisions of the article and this quarantine.

PART 10.00 Costs:

The actual costs for inspections, investigations and any other activities related to control and eradication measures such as destruction or treatment for enforcement of the quarantine shall be charged to the producer at a rate of \$34 an hour plus 25 cents per mile.

Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and ~~**BOLD, SMALL CAP, DOUBLE UNDERLINE**~~ for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

PARTS 11.00 – 12.00 Reserved

PART 13.00 Statements of Basis, Specific Statutory Authority and Purpose

(a)13.1. Adopted November 19, 2009 – Effective December 30, 2009

Statutory Authority

This Quarantine is imposed pursuant to the Pest Control Act, § § 35-4-110, C.R.S. (2009).

Purpose

The purpose of this Quarantine is to protect Colorado by reducing the introduction of Japanese beetle (*Popillia japonica*) into Colorado. Reduction of Japanese beetle introductions will reduce damage to susceptible landscape plants and crops and minimize the need for pesticide treatment to control the pest. Reducing the introduction of Japanese beetle will allow for some nurseries to continue to export nursery stock to noninfested states. In addition the quarantine provides for the recovery of costs incurred by the Commissioner in enforcement of the quarantine.

Factual Findings

The Commissioner of Agriculture finds as follows:

- 1) Japanese beetle is a scarab beetle, approximately one-half inch long with a metallic green body and copper-colored covers on its wings. It can be identified by its 12 tufts of hairs bordering the margin of the wing covers.
- 2) From its original introduction in New Jersey in 1919, Japanese beetle has greatly expanded its range. It is now generally distributed throughout the country, excluding the western United States. It is also found in parts of Ontario, Canada.
- 3) Japanese beetle is most commonly transported to new locations with soil surrounding nursery plants. Eggs are sometimes laid in the soil of container stock and balled/burlap nursery materials, so the root feeding larvae are carried with the plants.
- 4) The Japanese beetle can be a very damaging insect in both the adult and larval stages. Adult Japanese beetles cause serious injury to leaves and flowers of many ornamentals, fruits, and vegetables. Among the plants most commonly damaged are rose, grape, crabapple, and beans. Larvae chew roots of turfgrasses and it is the most important white grub pest of turfgrass in much of the northeastern quadrant of the United States.
- 5) Japanese beetle is a regulated insect subject to internal quarantines in the United States. The presence of established Japanese beetle populations in Colorado restricts trade. Nursery products originating from Japanese beetle-infested states require special treatment or are outright banned from shipment to areas where this insect does not occur.
- 6) Japanese beetle has likely been introduced into Colorado on several occasions. However, historically these almost always failed to result in reproducing, established populations in the state. Unfortunately, this situation has recently changed as at least two populations are now known. The first population began in 2003 in the Palisade area on the West Slope. Efforts to eradicate it have now been successful. More recently, Japanese beetle has been discovered in Denver and Arapahoe County.

7) Historically, this insect is a target for large amounts of insecticide use where it is established.

(b)13.2. Adopted December 16, 2010 – Effective January 30, 2011

Statutory Authority:

These amendments to the permanent rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pest Control Act (the “Act”) at Section 35-4-110 C.R.S.

Purpose

The purpose of this amendment is to:

1. Correct errors.
2. Clarify treatment protocols.
3. Clarify that all ornamental grasses are restricted.
4. Add restriction protocol for pot-in-pot production of nursery stock.

Factual and Policy Issues

The factual and policy issues encountered in proposing these amendments are as follows:

1. British Columbia is not under quarantine and needs to be removed.
2. Ornamental grasses regardless of size have been identified as a high risk carrier of Japanese beetle.
3. Allow for a non-chemical treatment option for pot-in-pot nursery stock production.

(e)13.3. Adopted February 15, 2013 – Effective March 30, 2013

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 Pest Control Act, § 35-4-110, C.R.S.

Purpose:

The purposes of these amendments are to:

1. Repeal the rules related to soil survey/sampling protocol at Section 5.00(b).
2. Establish a container size limit under the Container Certification protocol.

Factual and Policy Issues

The factual and policy issues encountered in proposing these amendments are as follows:

1. The soil survey/sampling protocol for certification of field grown nursery stock is not rigorous and potential risk of introduction of Japanese beetle larvae in harvested root balls of large nursery stock is high when using this certification protocol. As such it is proposed that the entire protocol be eliminated. Harvested field grown nursery stock may instead enter the

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state of Colorado with the remaining treatment protocols currently listed in the quarantine.

2. Containerized nursery stock is allowed entry into the state under a protocol whereby the container must not directly sit on top of soil. Containers that sit on top of raised benches or on some type of barrier such as gravel or landscape fabric are eligible for certification. Currently any sized container is eligible when produced in this manner. However, larger sized containers, or containers bigger than 16" in diameter pose a high risk for introduction of beetle larvae, even when produced under the container protocol. Therefore a restriction on the size of container eligible for certification using this protocol is warranted. Containers less than 16" in diameter pose reduced risk and will still remain eligible for certification using the container certification protocol. Nursery stock in containers larger than 16" in diameter are eligible for certification via dip treatment.

13.4. ADOPTED NOVEMBER 9, 2016 – EFFECTIVE DECEMBER 30, 2016

STATUTORY AUTHORITY:

THESE AMENDMENTS TO THE QUARANTINE ARE ADOPTED BY THE COLORADO COMMISSIONER OF AGRICULTURE (COMMISSIONER) PURSUANT TO HIS AUTHORITY UNDER THE PEST CONTROL ACT (SECTION 35-4-110, C.R.S.)

PURPOSE

THE PURPOSES OF THESE AMENDMENTS ARE TO:

- 1. ADD THE COLORADO COUNTIES OF ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, EL PASO, JEFFERSON, LARIMER, PUEBLO, AND WELD TO THE AREAS UNDER QUARANTINE.**
- 2. ADD AN ADDITIONAL CERTIFICATION METHOD VIA PRODUCTION IN AN APPROVED JAPANESE BEETLE FREE GREENHOUSE OR SCREENHOUSE FOR ORNAMENTAL GRASSES.**
- 3. OFFER NURSERIES AN ADDITIONAL CERTIFICATION METHOD TO ALLOW PEST FREE NURSERY STOCK TO CONTINUE TO ENTER NON-INFESTED AREAS OF COLORADO WHILE PROTECTING THOSE AREAS FROM JAPANESE BEETLE INTRODUCTION.**

FACTUAL AND POLICY ISSUES

THE FACTUAL AND POLICY ISSUES ENCOUNTERED IN PROPOSING THESE AMENDMENTS ARE AS FOLLOWS:

- 1. JAPANESE BEETLE POPULATIONS IN THESE FRONT RANGE COLORADO COUNTIES HAVE RISEN IN NUMBER OVER TIME AND MANY AREAS WITHIN THESE COUNTIES ARE CONSIDERED INFESTED.**
- 2. A SYSTEMS APPROACH TO NURSERY CERTIFICATION (SANC) ALLOWS APPROVED NURSERIES AN ADDITIONAL AND ALTERNATIVE METHOD OF PEST CONTROL THAT CAN BE TAILORED TO FIT THE SPECIFIC NEEDS OF EACH PARTICIPATING NURSERY.**
- 3. THIS CERTIFICATION METHOD IS AVAILABLE TO AN OUT-OF-STATE NURSERY IF THE SANC PROGRAM IN ITS' STATE IS EQUIVALENT TO THAT APPROVED FOR USE BY COLORADO NURSERIES.**
- 4. ORNAMENTAL GRASSES PRODUCED IN A JAPANESE BEETLE-FREE GREENHOUSE OR SCREENHOUSE MEET CERTIFICATION STANDARDS AND PROVIDE GROWERS WITH AN ADDITIONAL METHOD FOR PEST FREE NURSERY STOCK CERTIFICATION.**



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“QUARANTINE IMPOSED AGAINST ALL LIFE STAGES OF THE JAPANESE BEETLE (POPILLIA JAPONICA) AND HOSTS OR POSSIBLE CARRIERS OF JAPANESE BEETLE PURSUANT TO THE COLORADO PEST CONTROL ACT”

8 CCR 1203-21

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 19, 2016
TIME: 9:30 a.m.
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to add several Colorado counties to the areas under quarantine; add an additional certification method for ornamental grasses; add an additional certification method to allow pest free nursery stock to continue to enter non-infested areas; and update formatting to be consistent with other rules within the Department.

The statutory authority for these rules is § 35-4-110, 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00465

Department

1200 - Department of Agriculture

Agency

1203 - Plant Industry Division

CCR number

8 CCR 1203-26

Rule title

The Use of Pesticides in the Cultivation of Retail Marijuana

Rulemaking Hearing**Date**

10/19/2016

Time

10:00 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to adopt a new rule designating the criteria for determining which pesticides may be used in the cultivation of retail marijuana.

Statutory authority

§ 24-20-112(1), C.R.S.

Contact information**Name**

Karen Lover

Title

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Editing comments: Changes to this rule are indicated in ~~bold-strikethrough~~ for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

COLORADO DEPARTMENT OF AGRICULTURE

PLANT INDUSTRY DIVISION

8 CCR 1203-26

THE USE OF PESTICIDES IN THE CULTIVATION OF RETAIL MARIJUANA

PART 1 DEFINITION AND CONSTRUCTION OF TERMS

AS USED IN THESE RULES, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- 1.1. "HUMAN CONSUMPTION" MEANS THE CONSUMPTION OF MARIJUANA BY A PERSON THROUGH ORAL INGESTION, ABSORPTION THROUGH THE SKIN OR INHALATION THROUGH SMOKING, VAPORIZATION OR OTHER MEANS.**
- 1.2. "PEST" AS DEFINED IN SECTION 35-10-103(9), C.R.S., OF THE PESTICIDE APPLICATORS' ACT, MEANS ANY INSECT, RODENT, NEMATODE, FUNGUS, WEED, OR OTHER FORM OF TERRESTRIAL OR AQUATIC PLANT OR ANIMAL LIFE OR VIRUS, BACTERIA, OR OTHER MICROORGANISM (EXCEPT VIRUSES, BACTERIA, OR OTHER MICROORGANISMS ON OR IN LIVING MAN OR IN OTHER LIVING ANIMALS) WHICH THE COMMISSIONER OR THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY DECLARES TO BE A PEST.**
- 1.3. "PESTICIDE" AS DEFINED IN SECTION 35-10-103(10), C.R.S., OF THE PESTICIDE APPLICATORS' ACT, 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" SHALL NOT INCLUDE ANY ARTICLE THAT IS A "NEW ANIMAL DRUG" AS DESIGNATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.**
- 1.4. "PLANT REGULATOR" AS DEFINED IN SECTION 35-10-103(11), C.R.S., OF THE PESTICIDE APPLICATORS' ACT, MEANS ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED, THROUGH PHYSIOLOGICAL ACTION, FOR ACCELERATING OR RETARDING THE RATE OF GROWTH OR RATE OF MATURATION OR FOR OTHERWISE ALTERING THE BEHAVIOR OF PLANTS OR THE PRODUCE THEREOF; EXCEPT THAT "PLANT REGULATOR" SHALL NOT INCLUDE SUBSTANCES TO THE EXTENT THAT THEY ARE INTENDED AS PLANT NUTRIENTS, TRACE ELEMENTS, NUTRITIONAL CHEMICALS, PLANT INOCULANTS, AND SOIL AMENDMENTS. ALSO, "PLANT REGULATOR" SHALL NOT BE REQUIRED TO INCLUDE ANY OF THOSE NUTRIENT MIXTURES OR SOIL AMENDMENTS WHICH ARE COMMONLY KNOWN AS VITAMIN-HORMONE HORTICULTURAL PRODUCTS, INTENDED FOR IMPROVEMENT, MAINTENANCE, SURVIVAL, HEALTH, AND PROPAGATION OF PLANTS, WHICH ARE NOT FOR PEST DESTRUCTION AND WHICH ARE NONTOXIC AND NONPOISONOUS IN THE UNDILUTED PACKAGED CONCENTRATION.**
- 1.5. "RETAIL MARIJUANA" MEANS MARIJUANA CULTIVATED UNDER A LICENSE ISSUED BY THE COLORADO DEPARTMENT OF REVENUE, PURSUANT TO TITLE 12, ARTICLE 43.4, C.R.S.**
- 1.6. "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.**
- 1.7. "USE" AS DEFINED IN SECTION 35-10-103(18), C.R.S., OF THE PESTICIDE APPLICATORS' ACT, MEANS ALL ASPECTS OF THE HANDLING OF PESTICIDES, INCLUDING BUT NOT LIMITED TO THE MIXING, LOADING, APPLICATION OR ADMINISTRATION, SPILL CONTROL, AND DISPOSAL OF A PESTICIDE OR ITS**

CONTAINER.

PART 2 USE OF PESTICIDES

- 2.1. BOTH STATE AND FEDERAL LAWS REQUIRE THAT PESTICIDES BE APPLIED ACCORDING TO LABEL DIRECTIONS. AS PART OF THE DIRECTIONS FOR USE, LABELS FOR PESTICIDES INTENDED FOR USE ON PLANTS SPECIFY THE CROPS AND/OR SITES TO WHICH THEY CAN BE APPLIED. IN ADDITION, THE ENVIRONMENTAL PROTECTION AGENCY SETS TOLERANCES THAT LIMIT PESTICIDE RESIDUES IN OR ON FOOD TO ENSURE WITH A REASONABLE CERTAINTY THAT NO HARM WILL RESULT FROM AGGREGATE EXPOSURES. CERTAIN PESTICIDES HOWEVER, MAY BE EXEMPTED FROM THIS TOLERANCE REQUIREMENT IF THE ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED THAT USE IN ACCORDANCE WITH THEIR LABEL DIRECTIONS POSES NO HAZARD TO PUBLIC HEALTH. 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 MARIJUANA 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 MARIJUANA BECAUSE THE HEALTH EFFECTS ON CONSUMERS ARE UNKNOWN.
- 2.2. NOTWITHSTANDING THE ABSENCE OF ANY PESTICIDES SPECIFICALLY LABELED FOR USE ON MARIJUANA, SOME PESTICIDES HAVE BROAD LABEL LANGUAGE THAT DOES NOT PROHIBIT THEIR USE ON MARIJUANA AND ARE EXEMPT FROM THE TOLERANCE REQUIREMENTS. THESE RULES SET FORTH THE CRITERIA UNDER WHICH CERTAIN PESTICIDES MAY BE LEGALLY USED ON RETAIL MARIJUANA IN THE STATE OF COLORADO. TO ASSIST RETAIL MARIJUANA GROWERS, THE DEPARTMENT WILL PUBLISH A LIST OF PESTICIDES THAT IT HAS DETERMINED MEET THESE CRITERIA.
- 2.3. ANY PESTICIDE USED IN THE CULTIVATION OF RETAIL MARIJUANA MUST BE REGISTERED WITH THE COLORADO DEPARTMENT OF AGRICULTURE.
- 2.4. ANY PESTICIDE REGISTERED WITH THE COLORADO DEPARTMENT OF AGRICULTURE MAY BE USED IN ACCORDANCE WITH ITS LABEL OR LABELING DIRECTIONS FOR THE CULTIVATION OF RETAIL MARIJUANA IN THE STATE OF COLORADO UNDER THE FOLLOWING CONDITIONS:
- 2.4.1. FOR PRODUCTS REGISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 2 OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT:
- 2.4.1.1. 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, AND;
- 2.4.1.2. THE PESTICIDE PRODUCT LABEL ALLOWS USE ON THE INTENDED SITE OF APPLICATION. THE TERM "SITE" FOR PURPOSES OF THIS RULE INCLUDES ANY LOCATION OR CROP TO WHICH THE APPLICATION IS MADE, AND;
- 2.4.1.3. THE PESTICIDE PRODUCT LABEL EXPRESSLY ALLOWS USE ON CROPS OR PLANTS INTENDED FOR HUMAN CONSUMPTION, AND;
- 2.4.1.4. THE ACTIVE INGREDIENTS OF THE PESTICIDE PRODUCT ARE ALLOWED FOR USE ON TOBACCO.
- 2.4.2. NOTWITHSTANDING PART 2.4.1.3, THE COMMISSIONER HAS THE AUTHORITY TO PERMIT THE USE OF A PESTICIDE PRODUCT, THAT DOES NOT EXPRESSLY ALLOW USE ON CROPS INTENDED FOR HUMAN CONSUMPTION IF:
- 2.4.2.1. THE ACTIVE AND INERT INGREDIENTS ARE EXEMPT UNDER 40 C.F.R. PART 180, SUBPARTS D AND E, AND;

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~~2.4.2.2. THE PESTICIDE PRODUCT LABEL ALLOWS USE ON THE INTENDED SITE OF APPLICATION, AND;~~

~~2.4.2.3. THE ACTIVE INGREDIENTS OF THE PESTICIDE PRODUCT ARE ALLOWED FOR USE ON TOBACCO BY THE ENVIRONMENTAL PROTECTION AGENCY.~~

~~2.4.3. THE PESTICIDE PRODUCT LABEL SPECIFICALLY ALLOWS USE ON MARIJUANA.~~

~~2.4.4. FOR 25(B) MINIMUM RISK PESTICIDE PRODUCTS AS DEFINED IN 40 CFR 152.25(F); THE PESTICIDE PRODUCT LABEL ALLOWS USE ON THE INTENDED SITE OF APPLICATION AND ALLOWS USE ON CROPS OR PLANTS INTENDED FOR HUMAN CONSUMPTION.~~

~~2.4.5. FOR PESTICIDE PRODUCTS WITH A COLORADO SPECIAL LOCAL NEED REGISTRATION, ISSUED UNDER SECTION 24(C) OF THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT; THE COLORADO SPECIAL LOCAL NEED LABEL ALLOWS USE ON MARIJUANA.~~

~~2.5. THE COMMISSIONER MAY PROHIBIT THE USE OF ANY PESTICIDE PRODUCT FOR THE CULTIVATION OF RETAIL MARIJUANA IF HE DETERMINES THAT SUCH USE POSES A SIGNIFICANT THREAT TO PUBLIC HEALTH AND SAFETY OR THE ENVIRONMENT.~~

~~PART 3 USE OF FERTILIZERS~~

~~3.1. THE STATE FERTILIZER LAW DOES NOT SET FORTH ANY REQUIREMENTS REGARDING THE APPLICATION OR USE OF FERTILIZERS, PLANT AMENDMENTS OR SOIL CONDITIONERS FOR ANY PLANTS, INCLUDING MARIJUANA.~~

~~PARTS 4-5 RESERVED~~

~~PART 6 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE~~

~~4.1. ADOPTED NOVEMBER 9, 2016- EFFECTIVE DECEMBER, 30, 2016~~

~~STATUTORY AUTHORITY~~

~~THESE RULES ARE BEING PROMULGATED PURSUANT TO SECTION 24-20-112(1), C.R.S., IN ACCORDANCE WITH EXECUTIVE ORDER D 2013-007.~~

~~PURPOSE OF THESE RULES~~

~~THE PURPOSE OF THESE RULES IS TO IMPLEMENT THE STATUTORY DIRECTIVE SET FORTH IN SECTION 24-20-112(1) C.R.S., AS SPECIFIED IN EXECUTIVE ORDER D 2013-007, TO DESIGNATE THE CRITERIA FOR DETERMINING WHICH PESTICIDES MAY BE USED IN THE CULTIVATION OF RETAIL MARIJUANA.~~

~~FACTUAL BASIS AND POLICY ISSUES~~

~~1. SECTION 24-20-112(1) C.R.S., REQUIRES THE GOVERNMENT TO DESIGNATE A STATE AGENCY TO PROMULGATE RULES TO ESTABLISH THE CRITERIA FOR DETERMINING WHICH PESTICIDES MAY BE LEGALLY USED IN THE CULTIVATION OF RETAIL MARIJUANA.~~

~~2. EXECUTIVE ORDER D 2013-007 ASSIGNED THIS RESPONSIBILITY TO THE COLORADO DEPARTMENT OF AGRICULTURE.~~

3. ON MARCH 30, 2016, THE COLORADO DEPARTMENT OF AGRICULTURE ADOPTED RULES UNDER THE PESTICIDE APPLICATORS' ACT GOVERNING THE USE OF PESTICIDES FOR THE CULTIVATION OF ALL CANNABIS, PUBLISHED AT 8 CCR 1203-2.
4. THESE RULES, WHICH PURSUANT TO SECTION 24-20-112(1), C.R.S., APPLY ONLY TO RETAIL MARIJUANA, SET FORTH THE SAME CRITERIA ESTABLISHED FOR ALL CANNABIS IN THE PESTICIDE APPLICATORS' ACT RULES.



COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR ADOPTION OF

“The Use of Pesticides in the Cultivation of Retail Marijuana”

8 CCR 1203-26

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 19, 2016
TIME: 10:00 a.m.
LOCATION: Colorado Department of Agriculture
San Juan Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021

The purpose of this rulemaking is to adopt a new rule designating the criteria for determining which pesticides may be used in the cultivation of retail marijuana.

The statutory authority for these rules is § 24-20-112(1), 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. 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 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Notice of Proposed Rulemaking

Tracking number

2016-00439

Department

1507 - Department of Public Safety

Agency

1507 - Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-42

Rule title

FILING TIER II REPORTS ELECTRONICALLY

Rulemaking Hearing**Date**

10/24/2016

Time

01:00 PM

Location

9195 E Mineral Avenue, Policy Room, Centennial, CO

Subjects and issues involved

The Emergency Planning and Community Right-to-Know Act (EPCRA), requires regulated facilities to submit a report of their emergency and hazardous chemical inventory to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department annually. These rules outline how TIER II Reports are to be filed electronically.

Statutory authority

24-33.5-1503.5 (1) and (2) C.R.S

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DEPARTMENT OF PUBLIC SAFETY

Colorado Emergency Planning Committee

FILING TIER II REPORTS

ELECTRONICALLY 8 CCR 1507-42

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

1507-42.1 Authority

This regulation is adopted pursuant to the authority in section 24-33.5-1503.5 (1) and (2) 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"), C.R.S. and the Colorado Emergency Planning Committee Act, sections 24-33.5-1501 et seq. (the "Act"), C.R.S.

1507-42.2 Background

The federal "Emergency Planning and Community Right-to-Know Act" (EPCRA), 42 U.S.C. § 11001 et seq., was adopted by Congress in 1986. EPCRA Section 312 (42 U.S.C. § 11022) requires regulated facilities to submit a report of their emergency and hazardous chemical inventory to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department annually. The purpose of this report is to provide state and local emergency planning and response officials as well as the public with specific information on hazardous chemicals present at a facility.

For facilities exceeding the chemical thresholds defined by U.S. EPA regulations promulgated under the authority of EPCRA, this report requirement is fulfilled by the annual submission of a Tier II Chemical Inventory report. The format and content of the Tier II report were established by U.S. EPA through regulations promulgated under the authority of EPCRA.

The Tier II report is electronically filed with the Colorado Emergency Planning Committee (CEPC) by submittal to the Colorado Department of Public Health and Environment (CDPHE) Division of Environmental Health and Sustainability (DEHS). Beyond 2016, the DEHS in support with the CEPC intends to explore, in conjunction with national update efforts for CAMEO, electronic Tier II submittal, and on-line products, one filing point for submittal to the CEPC (SERC), LEPC, and local Fire Departments.

The CEPC is established by statute and is the State Emergency Response Commission (SERC) as defined by EPCRA. Under Colorado Revised Statutes § 24-33.5-1501 et seq, C.R.S., the CEPC is the state agency responsible for the implementation of EPCRA in Colorado. The Director of the Division of Homeland Security and Emergency with advice of the CEPC is charged to promulgate rules and regulations necessary to "establish a uniform system for reporting and management of information required by the federal act".

Specifically, under §24-33.5-1503.5 (2)(b), C.R.S., the Division Director is required

"To establish a uniform system for reporting and management of information required by the federal act."

Further, under §24-33.5-1503.5 (2)(c), C.R.S., the Division Director has authority

“To create and adopt such forms as are necessary for the uniform reporting and management of information required by the federal act, including, but not limited to, the following:

(i) A standardized tier II reporting form to replace the tier II form which is required under the federal act, and which shall be accepted by local emergency planning committees in reporting the information contained therein;”

In guidance issued on July 13, 2010, EPA provided the following interpretation of its Tier II reporting regulations under EPCRA:

States have the flexibility to use any system for collecting chemical inventory information under section 312 and to establish the means to ensure the information is true, accurate, and complete so they may effectively and efficiently manage chemical risks and provide information to the public. 75 FR 39852, at 39856, July 13, 2010.

Since the adoption of EPCRA, electronic reporting capability has expanded. U.S. EPA has supported electronic reporting with free software designed to take the place of the Tier II paper form. Known as Tier2 Submit, there have been several generations of this free software and in its current form has proven to be reliable and easy for the reporting facilities to use. It may be downloaded from EPA at

<http://www.epa.gov/emergencies/content/epcra/tier2.htm>

Tier2 Submit reports submitted by facilities are easily imported into another free software program known as Computer-Aided Management of Emergency Operations (CAMEO). This program is also useful to the LEPCs and fire departments that use and review hazardous chemical information from reporting facilities. With the same free software, LEPCs and fire departments can review and manage the hazardous chemical information they receive from reporting facilities.

<https://www.epa.gov/cameo>

1507-42.3 Purpose

The CEPC proposes a rule requiring the owner or operator of a facility subject to EPCRA Section 312 (Tier II) Chemical Inventory reporting to use the U.S. EPA Tier2 Submit software, as updated or modified over time, to prepare their Tier II report. Using the Tier2 Submit software, the facility submits its report as an electronic file in the Tier2 Submit format either via e-mail or by a mailed CD/diskette to the Colorado Department of Public Health and Environment (CDPHE) Division of Environmental Health and Sustainability (DEHS).

Instructions for downloading the Tier2 Submit software, and requirements for the validation and submission of reports to DEHS on behalf of the CEPC will be updated each year on Internet pages maintained by both DEHS and the CEPC to reflect any changes to web and mailing addresses or any other changes regarding the validation process and/or Tier2 Submit software.

The main benefits of receiving Tier II reporting in the Tier2 Submit format are:

- 1) Streamlining data processing so that updated Tier II data is available to emergency planners and responders more quickly;
- 2) Allowing the efficient import of Tier II data into the most commonly available emergency management software tools; and

3) Reducing manual data entry errors that lower data accuracy.

This rule change is intended to make clarifying changes to the reporting fields in order to reduce the burdens of reporting and using the data. These changes are expected to increase efficiencies and reduce reporting burden for regulated facilities. As DEHS continues to only receive fewer than three (3) filings using paper instead of Tier II submit software each year, this provision is being modified to require facilities to petition the CEPC, with a written statement of why computer based reporting is impossible, at least three months prior to the reporting deadline.

1507-42.4 Regulation

1. Facilities required to submit a Tier I or Tier II form under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11022, shall do so by the use of Tier2 Submit electronic reporting format, as it may be modified or renamed from time to time, which is freely available from the U.S. Environmental Protection Agency. The Colorado Department of Public Health & Environment (CDPHE) – Division of Environmental Health & Sustainability (DEHS), and the Colorado Emergency Planning Committee, will maintain a web page with current instructions on downloading the software and the process by which the report generated by that software will be validated and submitted, including an e-mail address for that purpose. This requirement was effective January 1, 2011 for the 2010 reporting year and for all Tier I and Tier II reports submitted thereafter and is restated in this 2015 update.
 - A. A facility owner/operator that reports using the Tier2 Submit electronic reporting software is not required to provide that same report to the local emergency planning committee or the local fire department. The Colorado Emergency Planning Committee will provide Tier II information to the local emergency planning committees and local fire departments.
 - B. The name of the county in which a facility is located, the legal name of the company owning the facility, the name of the fire district or fire department within whose jurisdiction the facility is located, are is a mandatory elements of the Tier II report. If a facility submits a site plan or other supplemental documents, the file name of those documents must be shorter than twenty (20) characters in order to allow importing into CAMEO.
2. If a facility owner/operator believes it is unableimpossible to comply with this requirement due to inadequatethe lack of an Internet connection and/or the lack of computer capabilityaccess caused by factors external to the facility or company that owns the facility, the owner/operator must contact DEHSpetition the CEPC at least three months prior to the reporting deadline documenting for approval to make other arrangements to comply with the Tier II reporting obligations under 42 U.S.C. §11022, to include— submittal of the paper form. The CEPC must act on the petition within thirty days and may reject the petition if no the facility is unable to document that electronic means of reporting is possible for that facilityreporting is truly impossible. Inconvenience alone is not an adequate reason to avoid the requirement to electronically report.

Editor's Notes

History

Entire rule eff. Date

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

CCR number

1 CCR 206-1

Rule title

1 CCR 206-1 LOTTERY RULES AND REGULATIONS 1 - eff 10/18/2016

Effective date

10/18/2016

DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

AMENDED RULE 14.D COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "MEGA MILLIONS" - "MEGAPLIER®"

BASIS AND PURPOSE OF AMENDED RULE 14.D

The purpose of Amended Rule 14.D is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "MEGA MILLIONS GAME® " "MEGAPLIER®" such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Amended Rule 14.D is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.

14.D.1 General Provisions

- A. A Colorado Lottery multi-state Jackpot game known as "MEGA MILLIONS GAME®" shall have a game option known as "MEGAPLIER®", which allows players the option to pay an additional one dollar (\$1) for a chance to increase any Set Prize they may win on that purchase. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.D, Rule 14.D shall apply.
- B. The Party Lottery and the Lottery Commission, prior to implementation, must approve all MUSL MEGA MILLIONS GROUP guidelines and MUSL MEGA MILLIONS GROUP BOARD decisions associated with this "MEGAPLIER®".
- C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.
- D. At any time the Director determines that any provisions of the MUSL or of MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, he/she shall recommend to the Lottery Commission that the Lottery end its membership with MUSL or with the Specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.D.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 13.2 of Rule 13, Paragraph 14.2 of Rule 14, and Paragraph 14.C.2 of Rule 14.C.

14.D.3 Price of "MEGAPLIER®"

- A. The price of each "MEGAPLIER®" play selected shall be \$1.00. A player will have the Party Lottery licensee manually enter the "MEGAPLIER®" into the Jackpot Game terminal to purchase up to ten MEGA MILLIONS GAME® plays with ten "MEGAPLIER®" for a single draw as follows:

Number of MEGA MILLIONS plays	Number of MEGA MILLIONS boards	Cost of MEGA MILLIONS boards	Number of "MEGAPLIER®" boards	Cost of "MEGAPLIER® " boards	Total cost MEGA MILLIONS boards with "MEGAPLIER®"
1	One Board	\$1.00	One Board	\$1.00	\$2.00
2	Two Boards	\$2.00	Two Boards	\$2.00	\$4.00
3	Three Boards	\$3.00	Three Boards	\$3.00	\$6.00
4	Four Boards	\$4.00	Four Boards	\$4.00	\$8.00
5	Five Boards	\$5.00	Five Boards	\$5.00	\$10.00
6	Six Boards	\$6.00	Six Boards	\$6.00	\$12.00
7	Seven Boards	\$7.00	Seven Boards	\$7.00	\$14.00
8	Eight Boards	\$8.00	Eight Boards	\$8.00	\$16.00
9	Nine Boards	\$9.00	Nine Boards	\$9.00	\$18.00
10	Ten Boards	\$10.00	Ten Boards	\$10.00	\$20.00

- B. "MEGAPLIER®" is an add-on to the MEGA MILLIONS GAME® 5/75 + 1/15 game. Players who elect to pay an extra \$1 per MEGA MILLIONS play will have the opportunity to multiply their set prizes (all prizes except the Grand Prize) by the MEGAPLIER® number that is randomly selected at draw time.

14.D.4 Ticket Purchases

MEGA MILLIONS GAME® tickets with "MEGAPLIER®" may be purchased only from a Party Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

- A. MEGA MILLIONS GAME® tickets with "MEGAPLIER®" shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, "MEGAPLIER®" chosen and validation and reference numbers.
- B. A purchaser of a MEGA MILLIONS GAME® ticket must choose, at the time of purchase, whether or not he/she wants the "MEGAPLIER®". If the purchaser chooses the "MEGAPLIER®" for the ticket, the cost of the "MEGAPLIER®" will be \$1.00 per board. (See Paragraph 14.D.3 of this Rule 14.D for detailed MEGAPLIER® costs.) "MEGAPLIER" applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

14.D.5 Method of play

There will be no change in play for the MEGA MILLIONS GAME® 5/75 + 1/15 game. "MEGAPLIER®" is effective only for players who choose "MEGAPLIER®" at time of purchase and pay an additional \$1.00 per board.

- A. The MEGA MILLIONS GAME® "MEGAPLIER®" drawings shall be held twice each week on Tuesday and Friday. The MEGA MILLIONS GAME® "MEGAPLIER®" drawing is conducted by the Texas Lottery draw staff after all participating state's draw sales are closed and prior to the MEGA MILLIONS drawing.
- B. Each "MEGAPLIER®" drawing shall determine, at random, a single number in accordance with drawing guidelines. Any number drawn is not declared a winning number until the drawing is certified in accordance with the MEGAPLIER® drawing guidelines. The number drawn shall be used to determine all MEGA MILLIONS GAME® "MEGAPLIER®" prize amounts for that drawing. If a MEGAPLIER® drawing is not certified, the MEGAPLIER® number for the drawing defaults to "5".
- C. "MEGAPLIER®" multipliers are weighted as follows:

	MEGAPLIER® "5"	MEGAPLIER® "4"	MEGAPLIER® "3"	MEGAPLIER® "2"	TOTAL
Frequency	6	3	4	2	15
Percentage	40%	20%	26.66%	13.33%	99.99%

- D. Each "MEGAPLIER®" drawing shall be witnessed by an auditor, as required in C.R.S 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.
- E. The drawing shall not be invalidated based on the liability of a Party Lottery.
- F. All "MEGAPLIER®" drawings shall be open to the public.
- G. All drawings, inspections and tests shall be recorded on videotape.

14.D.6 Prizes For MEGA MILLIONS GAME® with "MEGAPLIER®" Selected

- A. Players who choose the "MEGAPLIER®" and pay the extra \$1.00 per board and who win the Second through Eighth set prize (any prize except the Grand Prize) will receive an amount equal to the set prize multiplied by the "MEGAPLIER®" number selected at the drawing. See the following table for prizes won if "MEGAPLIER®" is chosen and the set prizes are not pari-mutuel as defined in Paragraph 14.C.6.C. of Rule 14.C.

MEGA MILLIONS Prize Category	MEGA MILLIONS Prize Amounts	MEGAPLIER® "2" Drawn	MEGAPLIER® "3" Drawn	MEGAPLIER® "4" Drawn	MEGAPLIER® "5" Drawn
Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot

Second Prize	\$1,000,000	\$ 2,000,000	\$ 3,000,000	\$ 4,000,000	\$ 5,000,000
Third Prize	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000
Fourth Prize	\$500	\$1,000	\$1,500	\$2,000	\$2,500
Fifth Prize	\$50	\$100	\$150	\$200	\$250
Sixth Prize	\$5	\$10	\$15	\$20	\$25
Seventh Prize	\$5	\$10	\$15	\$20	\$25
Eighth Prize	\$2	\$4	\$6	\$8	\$10
Ninth Prize	\$1	\$2	\$3	\$4	\$5

- B. If the set prizes are pari-mutuel as defined in Paragraph 14.C.6.C. of Rule 14.C, and the player has selected and paid for the "MEGAPLIER®", the amount of the pari-mutuel set prize will be multiplied by the "MEGAPLIER®" number drawn for that drawing.

C.

14.D.7 Prize Payment

- A. Set Prizes

All set prizes (all prizes except the Grand Prize) with the "MEGAPLIER®" shall be paid by the Party Lottery. The Party Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

- B. Prizes Rounded

All prizes that include "MEGAPLIER®" may become pari-mutuel prizes. These prizes may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

14.D.8 Megaplier Prize Pool

- A. The Megaplier Prize Pool (MPP) is to fund Megaplier prizes. The MPP shall hold the temporary balances that may result from having fewer than expected winners in Megaplier. The source of the MPP is the Party Lottery's weekly prize contributions less actual Megaplier Prize liability.
- B. Up to fifty-five percent (55%) of each drawing period's sales, as determined by the Game Group, shall be collected for the payment of Megaplier prizes.
- C. Prize payout percentages per draw may vary. The MPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Megaplier prizes awarded in the current draw and held in the MPP.
- D, Any amount remaining in the MPP when the Product Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction law.

14.D.9 Advance Play

Advance play provides the facility to purchase MEGA MILLIONS GAME® tickets for more than one drawing. A purchaser of MEGA MILLIONS GAME® tickets may also purchase "MEGAPLIER®" for all Advance Play plays. The Advance Play feature shall be available at the discretion of the Director.

The cost of each MEGAPLIER® ticket shall be an additional \$1.00 per board per drawing. E.g.: one MEGA MILLIONS GAME® play for two drawings with "MEGAPLIER®", \$4.00, one MEGA MILLIONS GAME® play for four drawings with "MEGAPLIER®", \$8.00. MEGAPLIER applies to all drawings for which the ticket is purchased and "MEGAPLIER®" is selected. Players cannot elect the option on a drawing-by-drawing basis when purchasing Advance Play tickets.

14.D.10 MEGA MILLIONS GAME® MEGAPLIER® Promotion

The Colorado Lottery will participate in any announced MEGA MILLIONS GAME® MEGAPLIER® promotions. The times and dates of any MEGA MILLIONS GAME® MEGAPLIER® promotion will be announced by the MUSL MEGA MILLIONS GAME® board and will be offered in conjunction with existing rules and regulations pertaining to the MEGA MILLIONS game.

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Tracking number: 2016-00340

Opinion of the Attorney General rendered in connection with the rules adopted by the

Lottery Commission

on 08/26/2016

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/29/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 02, 2016 14:53:32

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

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DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

AMENDED RULE 14.C COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "MEGA MILLIONS GAME®"

BASIS AND PURPOSE FOR AMENDED RULE 14.C

The purpose of Amended Rule 14.C is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "MEGA MILLIONS GAME®" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Amended Rule 14.C is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212 and 24-35-212.5.

14.C.1 General Provisions

A Colorado Lottery multi-state Jackpot game to be known as "MEGA MILLIONS GAME®" is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.C, Rule 14.C shall apply.

The MEGA MILLIONS GROUP consists of 12 party lotteries and the Multi-State Lottery Association (MUSL) as representation for participating MUSL party lotteries.

At any time the Director determines that any provisions of MEGA MILLIONS GROUP or MUSL MEGA MILLIONS PRODUCT GROUP's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its association with MEGA MILLIONS GROUP and with the MUSL MEGA MILLIONS PRODUCT GROUP. Upon concurrence by the Lottery Commission, association with the MEGA MILLIONS GROUP will be terminated upon six (6) months prior written notice to the MUSL MEGA MILLION PRODUCT GROUP.

14.C.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 14, and unless the context in this Rule 14.C otherwise requires:

- A. "Advance Play" means the ability to purchase tickets for more than one drawing beginning with the current open draw.
- B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.
- C. "Drawing" means formal process of selecting winning numbers which determine the number of winners for each prize level of the game
- D. "Game Board(s)" or "Board(s)" means that area of the Play Slip, also known as a "panel", which contains sets of numbered squares to be marked by the player
- E. "Grand Prize" or "Jackpot" means the top prize of the MEGA MILLIONS GAME®. It is the estimated annuitized Grand Prize amount as determined by the Mega Millions Consortium and

communicated through the Selling Lotteries prior to the Grand Prize drawing. The advertised Grand Prize is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount. The annuity Grand Prize is an amount that will be paid in thirty (30) graduated annual installments.

- F. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.
- G. "Matching Combinations" means the numbers on a play that coincide with the numbers randomly selected at a drawing for which that play was purchased.
- H. "MEGA MILLIONS LOTTERY OR LOTTERIES" means those lotteries which have joined under the MEGA MILLIONS Lottery Agreement; the group of lotteries that has reached a Cross-Selling Agreement with the MUSL PRODUCT GROUP for the selling of the MEGA MILLIONS GAME®.
- I. "MUSL MEGA MILLIONS PRODUCT GROUP" or "PRODUCT GROUP" means the group of lotteries that has joined together to offer the Mega Millions lottery game product pursuant to the terms of its Cross-Selling Agreement with the Mega Millions Lotteries, the Multi-State Lottery Agreement and the Product Group's own rules.
- J. "MUSL MEGA MILLIONS GROUP BOARD" means the governing body of the MUSL MEGA MILLIONS PRODUCT GROUP, which is comprised of the chief executive officer of each Party Lottery.
- K. "Number" means any play integer from one (1) through seventy-five (75) inclusive.
- L. "Party Lottery" means a state lottery or lottery of a political subdivision or entity which has joined the MUSL and, in the context of the specific PRODUCT GROUP Rules, has joined in selling the game offered by the MUSL MEGA MILLIONS PRODUCT GROUP.
- M. "Play" or "bet" means the six (6) numbers, the first five (5) from a field of seventy-five (75) numbers and the last one (1) from a field of fifteen (15) numbers, that appear on a ticket or ticketless transaction as a single lettered selection and are to be played by a player in the game.
- N. "Play slip" means a mark-sense game card used by players of "MEGA MILLIONS GAME®" to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers
- O. "Prize Pool" means a defined percentage of sales as specified in this rule.
- P. "Quick Pick" or "Partial Quick Pick" means the random selection of numbers by the computer system, which appears on a ticket and are played by a player in a the game.
- Q. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the Grand Prize category that is not won, that is carried forward to the Grand Prize category for the next drawing.
- R. "Set Prize" means all other prizes except the Grand Prize and, except in instances outlined in these rules, will be equal to the prize amount established within the Specific Game Playing Rules.
- S. "Set Prize Pool (SPP)" is a prize pool account which is used to fund the Set Prizes. The SPP shall hold the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories.

- T. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.
- U. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of seventy-five (75) numbers and the last one (1) from a separate field of fifteen (15) numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a multi-state Jackpot Game ticket.

14.C.3 Price of "MEGA MILLIONS GAME®" Play/Board

The price of each "MEGA MILLIONS GAME®" play/board shall be set by the MEGA MILLIONS GROUP. A Jackpot Game licensee may be permitted to make gifts of "MEGA MILLIONS GAME®" tickets as a means of promoting the sale of goods or services to the public upon receipt of prior approval by the Party Lottery Director and notice to the PRODUCT GROUP members.

14.C.4 Ticket Purchases

- A. "MEGA MILLIONS GAME®" tickets may be purchased only from a Party Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.
- B. "MEGA MILLIONS GAME®" tickets shall show, at a minimum, the player's selection of numbers, the boards played, drawing date and validation and reference numbers.
- C. The Party Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a winning ticket.
- D. Plays may be entered manually using the Jackpot Game terminal keypad or by means of a play slip provided by the Colorado Lottery. Facsimiles of play slips, copies of play slips, or other materials which are inserted into the terminal's play slip reader and which are not printed or approved by the Lottery shall not be used to enter a play. No device shall be connected to a Jackpot Game terminal to enter plays, except as may be approved by the Colorado Lottery. Unapproved play slips or other devices may be seized by the Colorado Lottery.
- E. All plays made in the game shall be marked on the play slip by hand. No machine-printed play slips shall be used to enter plays. Machine-printed play slips may be seized by the Party Lottery. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

14.C.5 Play for "MEGA MILLIONS GAME®"

- A. Type of play:

A "MEGA MILLIONS GAME®" player must select six numbers in each play, five (5) numbers out of seventy-five (75) plus one (1) out of fifteen (15). A winning play is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn by the MEGA MILLIONS GROUP. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.

- B. Method of play:

- 1. Manual Plays include player use of play slips, as provided in Paragraph 14.C.4 of this Rule 14.C, to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding play(s). The Jackpot Game licensee may also enter the selected numbers via the keyboard.

2. Computer Generated Plays include Quick Pick and Partial Quick Pick. Quick Picks and Partial Quick Pick can be generated using a play slip or by the Jackpot Game licensee. The Jackpot Game licensee may select Quick Pick via the keyboard at the beginning of the transaction for full Quick Pick or the Jackpot Game licensee may enter the player selected numbers via the keyboard then select the Quick Pick function to complete the number selection.

14.C.6 Prizes For "MEGA MILLIONS GAME®"

A. Odds of winning

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of second set	Grand Prize	1:258,890,850
All five (5) of first set plus none of second set	Second Prize	1:18,492,204
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:739,688
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:52,835
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:10,720
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:766
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:473
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:56
None of first set plus one (1) of second set	Ninth Prize	1:21
Overall odds of winning any prize		1:14.7

- B. The prize pool contribution for all prize categories shall consist of up to fifty-five percent (55%) of each drawing period's sales, inclusive of contributions to the prize pool accounts and prize reserve accounts. An amount up to five percent (5%) of a Party Lottery's sales shall be added to a Party Lottery's Mega Millions Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group. PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool Percentage of Sales
Grand Prize	Announced Jackpot	65.154%	32.577%
Second Prize	\$1,000,000	10.815%	5.408%
Third Prize	\$5,000	1.352%	0.676%
Fourth Prize	\$500	1.893%	0.946%
Fifth Prize	\$50	.933%	0.466%
Sixth Prize	\$5	1.306%	0.653%
Seventh Prize	\$5	2.114%	1.057%
Eighth Prize	\$2	7.083%	3.542%
Ninth Prize	\$1	9.350%	4.675%
TOTAL		100.00%	50.00%

- C. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. All other prizes awarded shall be paid as set and single payment prizes with the above expected prize amounts.
1. The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards matching all five (5) of the first set plus one (1) of the second set.

If the total of the original Mega Millions set prizes and the Megaplier prize amounts awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the Set Prizes (including the Megaplier prize amounts) awarded can be drawn from the Prize Pool Accounts and Prize Reserve Accounts or become pari-mutuel prizes as determined by the Product Group.

14.C.7 Prize Pool Accounts and Prize Reserve Accounts

- A. The following prize reserve accounts for the Mega Millions game are hereby established:
1. The Prize Reserve Account (PRA) which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason.
 2. The following prize pool accounts for the Mega Millions game are hereby established:
 - a. The Grand Prize Pool (GPP), which is used to fund the current Grand Prize;
 - b. The Set Prize Pool (SPP), which is used to fund the Set Prizes. The SPP shall hold the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories. The

Source of the SPP is the Party Lottery's weekly prize contributions less actual Set Prize liability; and

- c. The Set-Aside Pool (SAP) which is used to fund the payment of the awarded minimum starting annuity Grand Prizes and the minimum annuity Grand Prize increase, if necessary (subject to the limitations in these rules), as may be set by the Product Group. The source of the SAP funding shall accumulate from the difference between the amount in the Grand Prize Pool at the time of a Grand Prize win and the amount needed to fund Grand Prize payments as determined by the Mega Millions lotteries.

The above prize reserve accounts shall have maximum balance amounts or balance limiter triggers that are set by the Product Group.

- B. At the Party Lottery Directors' or Director's designee's request, the PRODUCT GROUP may determine to expend all or a portion of the funds in the accounts (except the GPP) for the payment of prizes or special prizes in the game.
- C. The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries.
- D. Any amount remaining in a prize reserve account at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the PRODUCT GROUP on behalf of the Lottery Director, or the Director's designee, in accordance with jurisdiction law.

14.C.8 Prize Payment

- A. Grand Prizes
 1. Grand Prizes shall be paid, at the election of the ticket bearer by a single cash payment or in a series of annuity payments. The ticket bearer becomes entitled to the prize at the time the prize is validated as a winner. The election to take the cash payment or annuity payments may be made at the time the prize is validated or within 60 days after the ticket bearer becomes entitled to the prize. If no election is made within 60 days after the ticket bearer becomes entitled to the prize, the prize shall be paid as an annuity prize. The election is final and cannot be revoked, withdrawn or otherwise changed.
 2. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all boards matching all five (5) of the first set plus one (1) of the second set of drawn numbers. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment.
 - a. The starting guaranteed annuity Grand Prize value is fifteen million dollars (\$15,000,000).
 - b. The Grand Prize will grow at a minimum of five million dollars (\$5,000,000) with each successive drawing without a winning jackpot winner.
 - c. The cash option prize shall be determined by dividing the Grand Prize amount that would be paid over thirty (30) annual installments by a rate established by the Mega Millions Finance Committee prior to each drawing divided by the number of total jackpot winners.

3. Where there is only one (1) winning MEGA MILLIONS GAME Grand Prize ticket, no Grand Prize paid in thirty (30) annual installments shall be less than fifteen millions dollars (\$15,000,000).
4. All annuitized prizes shall be paid annually in thirty (30) graduated payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.
5. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available to the Party Lottery within 15 calendar days following the date of the winning draw. If funds are unavailable to cover the full lump sum cash amount, payment may be delayed.
6. In the event of the death of a lottery winner during the annuity payment period, the MUSL Finance & Audit Committee, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") to the Party Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If such a determination is made, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Finance & Audit Committee or PRODUCT GROUP.

B. Set Prizes

1. The Director's decision with respect to the validation and payment of set prizes, whether during a "MEGA MILLIONS GAME®" game or any drawing related thereto, shall be final and binding upon all participants in the Party Lottery.
2. All prizes shall be paid by the Party Lottery which sold the winning ticket. The Party Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office. All liability for a Mega Millions prize are discharged upon payment of a prize claim.

C. Prizes Rounded

1. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners.
2. Set Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

D. Roll-over

If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall rollover and be added to the Grand Prize pool for the following drawing.

E. Law

1. In purchasing a Play, or attempting to claim a prize, purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Party Lottery where the play was purchased, and by directives and determinations of the director of that Party Lottery. Additionally, the player shall be bound to all applicable provisions in the Mega Millions Finance and Operations Procedures.

2. A prize claimant agrees, as its sole and exclusive remedy that claims arising out of a Mega Millions Play can only be pursued against the Party Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Mega Millions Play was purchased and only against the Party Lottery that issued the Play. No claim shall be made against any other Party Lottery or against the MUSL.
3. Nothing in these Rules shall be construed as a waiver of any defense or claim the Party Lottery which issued the Play, any other Party Lottery, or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against a Party Lottery or MUSL, or their respective officers, directors or employees.
4. All decisions made by a Party Lottery, including the declaration of prizes and the payment thereof and the interpretation of Mega Millions Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Mega Millions Play was issued.
5. Unless the laws, rules, regulations, procedures, and decisions of the Party Lottery which issued the Play provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of these Rules or the laws, rules, regulations, procedures, and decisions of that Party Lottery; any such prize claimed but unpaid shall constitute an unclaimed prize under these Rules and the laws, rules, regulations, procedures, and decisions of that Party Lottery.

14.C.9 Grand Prize Account

- A. The draw reports determine whether the member lotteries owe funds to the MUSL or the MUSL needs to transfer money to the member lotteries. The Party Lottery shall transfer to the MUSL in trust an amount as determined to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Party Lottery.
- B. All funds to pay a grand prize that go unclaimed shall be returned to the Lottery by the MUSL in proportion to sales by the Lottery for the grand prize in question after the claiming period set by the Lottery selling the winning ticket expires.

14.C.10 Funds Transfer

- A. Draw Receivables from Member Lotteries

Funds shall be collected by the MUSL from each MUSL Party Lottery weekly by wire transfer or other means acceptable to the MUSL. The MUSL shall determine collection days. The amount to be transferred shall be calculated in accordance with the "MEGA MILLIONS GAME®" rules.

- B. Initial Grand Prize Funds Transferred to Party Lottery

The Grand Prize amount held by MEGA MILLIONS GROUP shall be transferred to the MUSL within fourteen (14) calendar days of a winning draw by a Party Lottery.

- C. Subsequent Grand Prize Payments from the PRODUCT GROUP to Party Lotteries.

The Grand Prize amount held by the PRODUCT GROUP for subsequent payment to annuity winners shall be transferred to the Party Lottery seven days preceding the first working day preceding the anniversary of the awarded grand prize. The Party Lottery will then make payment to the annuity winner.

14.C.11 Drawings

- A. The "MEGA MILLIONS GAME®" drawings shall be held twice each week on Tuesday and Friday evenings, except that the drawing schedule may be changed by the MEGA MILLIONS GROUP Board. In the event of an act of Force Majeure the drawing shall be rescheduled at the discretion of the MEGA MILLIONS GROUP and the MUSL MEGA MILLIONS GROUP BOARD.
- B. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. The Lottery Commission shall review and approve drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MEGA MILLIONS GROUP in accordance with the "MEGA MILLIONS GAME®" drawing guidelines. The winning numbers shall be used in determining all "MEGA MILLIONS GAME®" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.
- C. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.
- D. The drawing shall not be invalidated based on the liability of the Lottery.
- E. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.C.12 Advance Play

Advance play provides the opportunity to purchase "MEGA MILLIONS GAME®" tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Director.

14.C.13 MUSL MEGA MILLIONS PRODUCT GROUP Accounting and Finance

- A. The PRODUCT GROUP may establish a maximum balance for the prize reserve account(s). The prize reserve contribution shall be used to fund the prize reserve account until it reaches its maximum balance amounts. Once prize reserve account shares reaches the Party Lottery's maximum balance amounts, prize reserve contributions will not be collected from those Party Lotteries. The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve accounts(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. Any amount remaining at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the PRODUCT GROUP in accordance with jurisdictional law.
- B. Draw receivables from Party Lotteries

The draw reports determine whether the Party Lottery owes and needs to transfer funds to the MUSL, or the MUSL owes and needs to transfer funds to the Party Lottery. (The procedures and corresponding time lines documenting the timely and effective transfer of funds between the Party Lottery and the MUSL can be found in the Party Lottery's financial procedures.) Four different transfers are made on a continual basis:

1. Draw receivables transferred from the Party Lottery to the MUSL,
2. Set prize payments transferred from the MUSL to the Party Lottery,
3. Grand Prize payments from the Party Lottery to the MUSL; and
4. Subsequent Grand Prize annuity payments from the MUSL to the Party Lottery.

14.C.14 Jackpot Game Licensee Commission, Cashing Bonus, Selling Bonus, and Marketing Performance Bonus

- A. In addition to the Six Percent (6%) Commission set forth in Rule 14.19, retailers can earn a Cashing Bonus, Selling Bonus and Marketing Performance Bonus.
1. Each retailer will receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including \$599.
 2. In order to receive a Selling Bonus, the following criteria must be met:
 - a. A licensee must have sold a Grand Prize or a Second Prize Category winning multi-state Jackpot game ticket.
 - b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.
 - c. A licensee must be selling multi-state Jackpot Game tickets up to and including the day that the ticket is validated by the Lottery and must be the same licensed licensee who sold the winning ticket.
 - d. The Director or designee shall determine the amount of the jackpot-selling bonus for each qualified-prize-winning ticket sold.
 3. In order to receive a five-tenths of one percent (.5%) Marketing Performance Bonus the following criteria must be met:
 - a. A licensee must be licensed on the date the marketing performance bonus is declared;
 - b. A licensee must sell Scratch tickets up to and including the final sales day in which the marketing performance bonus is declared;
 - c. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.
- B. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.C(13)(1)) and/or the five-tenths of one percent (.5%) marketing bonus (14.C.13(3)) have been expensed, the Director may provide additional compensation to licensees as described in 14.C.13(2)(d) or may revert the excess amount thereby decreasing the bonus expense.

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Tracking number: 2016-00339

Opinion of the Attorney General rendered in connection with the rules adopted by the

Lottery Commission

on 08/26/2016

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/26/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 02, 2016 14:53:01

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

CCR number

1 CCR 206-1

Rule title

1 CCR 206-1 LOTTERY RULES AND REGULATIONS 1 - eff 10/19/2016

Effective date

10/19/2016

DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

AMENDED RULE 14.B COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "POWERBALL®" - "POWER PLAY® OPTION"

BASIS AND PURPOSE OF AMENDED RULE 14.B

The purpose of Amended Rule 14.B is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "POWERBALL®" "POWER PLAY® OPTION" such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Amended Rule 14.B is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.

14.B.1 General Provisions

Amended Rule 14.B becomes effective with sales on October 4, 2015, with the first draw October 7, 2015.

- A. A Colorado Lottery (Lottery) multi-state Jackpot game known as "POWERBALL®" shall have a game option known as "POWER PLAY®", which allows players the option to pay an additional one dollar (\$1) for a chance to increase any Set Prize they may win on that purchase. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.B, Rule 14.B shall apply.
- B. The Lottery and the Lottery Commission, prior to implementation, must approve all the Multi-State Lottery Association (MUSL) guidelines and the MUSL Board decisions associated with this "POWER PLAY® OPTION".
- C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of the MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.
- D. At any time the Director determines that any provisions of the MUSL or of the MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its membership with the MUSL or with the Specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.B.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 14.2 of Rule 14, and Paragraph 14.A.2 of Rule 14.A.

14.B.3 Price of "POWER PLAY® OPTION"

- A. The price of each "POWER PLAY® OPTION" play selected shall be \$1.00. A player will have the licensee manually enter the "POWER PLAY® OPTION" into the Jackpot Game terminal to purchase up to ten "POWERBALL®" plays with ten "POWER PLAY® OPTIONS" for a single draw as follows:

Number of "Powerball®" plays	Number of "Powerball®" boards	Cost of "Powerball®" boards	Number of "POWER PLAY® OPTION" boards	Cost of "POWER PLAY® OPTION" boards	Total cost "Powerball®" boards with "POWER PLAY® OPTION"
1	One Board	\$2.00	One Board	\$1.00	\$3.00
2	Two Boards	\$4.00	Two Boards	\$2.00	\$6.00
3	Three Boards	\$6.00	Three Boards	\$3.00	\$9.00
4	Four Boards	\$8.00	Four Boards	\$4.00	\$12.00
5	Five Boards	\$10.00	Five Boards	\$5.00	\$15.00
6	Six Boards	\$12.00	Six Boards	\$6.00	\$18.00
7	Seven Boards	\$14.00	Seven Boards	\$7.00	\$21.00
8	Eight Boards	\$16.00	Eight Boards	\$8.00	\$24.00
9	Nine Boards	\$18.00	Nine Boards	\$9.00	\$27.00
10	Ten Boards	\$20.00	Ten Boards	\$10.00	\$30.00

- B. The "POWER PLAY® OPTION" is an add-on to the "POWERBALL®" 5/69 + 1/26 game. Players who elect to pay an extra \$1 per "POWERBALL®" play will have the opportunity to increase their set prizes (all prizes except the Grand Prize).

14.B.4 Ticket Purchases

"POWERBALL®" tickets with the "POWER PLAY® OPTION" may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

- A. "POWERBALL®" tickets with the "POWER PLAY® OPTION" shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, "POWER PLAY® OPTION" chosen and validation and reference numbers.
- B. A purchaser of a "POWERBALL®" ticket must choose, at the time of purchase, whether or not he/she wants the "POWER PLAY® OPTION". If the purchaser chooses the "POWER PLAY® OPTION" for the ticket, the cost of the "POWER PLAY® OPTION" will be \$1.00 per board. (See Paragraph 14.B.3 of this Rule 14.B for detailed "POWER PLAY® OPTION" costs.) The Option applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

14.B.5 Method of play

- A. There will be no change in play for the "POWERBALL®" 5/69 + 1/26 game. The "POWER PLAY® OPTION" is effective only for players who choose the "POWER PLAY® OPTION" at time of purchase and pay an additional \$1.00 per board.
- B. The "POWERBALL®" "POWER PLAY® OPTION" drawings shall be held twice each week on Wednesday and Saturday.
- C. Each "POWER PLAY" drawing shall determine, at random, a single number in accordance with drawing guidelines. Any number drawn is not declared a winning number until the drawing is certified in accordance with the "POWERBALL®" drawing guidelines. The number drawn shall be used to determine all "POWERBALL®" "POWER PLAY® OPTION" prize amounts for that drawing. If a "POWERBALL®" drawing is not certified, the "POWER PLAY® OPTION" number for the drawing defaults to "5".
- D. "POWER PLAY® OPTION" multiplier of ten (10) is available when the initial advertised POWERBALL® jackpot level is between forty million dollars (\$40,000,000) to one hundred fifty million dollars (\$150,000,000). When the multiplier of ten (10) is available, the multipliers are weighted as follows:

E.

	POWER PLAY® "10"	POWER PLAY® "5"	POWER PLAY® "4"	POWER PLAY® "3"	POWER PLAY® "2"	TOTAL
Frequency	1	2	3	13	24	43
Percentage	2.3255	4.6512%	6.9767%	33.2326%	55.8140%	99.9608%

When the initial advertised POWERBALL® jackpot is greater than one hundred fifty-one million dollars (\$151,000,000), the POWERBALL® "POWER PLAY" multipliers are weighted as follows

	POWER PLAY® "5"	POWER PLAY® "4"	POWER PLAY® "3"	POWER PLAY® "2"	TOTAL
Frequency	2	3	13	24	42
Percentage	4.7619%	7.1429%	30.9523%	57.1429%	100%

- F. Each "POWER PLAY® OPTION" drawing shall be witnessed by an auditor, as required in C.R.S 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.
- G. The drawing shall not be invalidated due to the multiplier drawn creating an excessive prize liability for the Lottery.
- H. All "POWER PLAY® OPTION" drawings shall be open to the public.
- I. All drawings, inspections and tests shall be recorded on videotape.

14.B.6 Prizes For "POWERBALL®" with "POWER PLAY® OPTION" Selected

- A. Players who choose the "POWER PLAY® OPTION" and pay the extra \$1.00 per board will have their set prizes multiplied. The Second set prize will be multiplied by two (2X) and the Third through Ninth set prize will receive an amount equal to the set prize multiplied by a drawn POWER PLAY® multiplier. See the following table for prizes won if "POWER PLAY® OPTION" is chosen and the set prizes are not pari-mutuel as defined in Paragraph 14.A.7.E of Rule 14.A.

"POWERBALL®" " Prize Category	"POWERBALL®" Prize Amounts	"POWER PLAY®" "2" Drawn	"POWER PLAY®" "3" Drawn	"POWER PLAY®" "4" Drawn	"POWER PLAY®" "5" Drawn	POWER PLAY® "10" Drawn Amounts
Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot
Second Prize	\$1,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000
Third Prize	\$50,000	\$100,000	\$150,000	\$200,000	\$250,000	\$500,000
Fourth Prize	\$100	\$200	\$300	\$400	\$500	\$1,000
Fifth Prize	\$100	\$200	\$300	\$400	\$500	\$1,000
Sixth Prize	\$7	\$14	\$21	\$28	\$35	\$70
Seventh Prize	\$7	\$14	\$21	\$28	\$35	\$70
Eighth Prize	\$4	\$8	\$12	\$16	\$20	\$40
Ninth Prize	\$4	\$8	\$12	\$16	\$20	\$40

- B. If the set prizes are pari-mutuel as defined in Paragraph 14.A.73E of Rule 14.A, and the player has selected and paid for the "POWER PLAY® OPTION", the amount of the pari-mutuel set prize will become pari-mutuel for that drawing.
- C. A Power Play Prize Pool (PPP) established by the MUSL Board shall be used to fund Power Play prizes. The PPP shall hold the temporary balances that may result from having fewer than expected winners in the Power Play. The source of the PPP is each Party Lottery's weekly prize contributions less actual Power Play Prize liability. The weekly prize contribution percentage is determined by the MUSL Board and may be collected and placed in trust in the PPP for the purpose of paying Power Play prizes. The prize payout percentage per draw may vary. The PPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Power Play prizes awarded in the current draw and held in the PPP.

14.B.7 Prize Payment

- A. All set prizes (all prizes except the Grand Prize) with the "POWER PLAY® OPTION" shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.
- B. All prizes, including those with the "POWER PLAY® OPTION", other than the Grand Prize, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

14.B.8 Advance Play

Advance play provides the facility to purchase "POWERBALL®" tickets for more than one drawing. A purchaser of "POWERBALL®" tickets may also purchase the "POWER PLAY® OPTION" for all Advance Play plays. At the discretion of the Director advance play tickets shall be available for purchase in increments up to and including 26 drawings. The cost adding the "POWER PLAY® OPTION" to a "POWERBALL®" ticket shall be an additional \$1.00 per board per drawing. E.g.: one "POWERBALL®" play for two drawings with "POWER PLAY® OPTION", \$6.00, one "POWERBALL®" play for four drawings with "POWER PLAY® OPTION", \$12.00. The Option applies to all drawings for which the ticket is purchased and the "POWER PLAY® OPTION" is selected. Players cannot elect the option on a drawing-by-drawing basis when purchasing Advance Play tickets.

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Tracking number: 2016-00338

Opinion of the Attorney General rendered in connection with the rules adopted by the

Lottery Commission

on 08/26/2016

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/26/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 02, 2016 14:52:23

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

CCR number

1 CCR 206-1

Rule title

1 CCR 206-1 LOTTERY RULES AND REGULATIONS 1 - eff 10/19/2016

Effective date

10/19/2016

DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

AMENDED RULE 14.A COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "POWERBALL®"

BASIS AND PURPOSE FOR AMENDED RULE 14.A

The purpose of Amended Rule 14.A is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "POWERBALL®" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Rule 14.A is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212 and 24-35-212.5.

14.A.1 General Provisions

Amended Rule 14.A becomes effective with sales on January 31, 2016, with the first draw February 3, 2016.

- A. A Colorado Lottery multi-state Jackpot game to be known as "POWERBALL®" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.A, Rule 14.A shall apply.
- B. All MUSL (Multi-State Lottery Association) guidelines and MUSL Board decisions must be approved by the Colorado Lottery (hereafter referred to as Lottery) and the Lottery Commission, prior to implementation.
- C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.
- D. At any time the Lottery Director determines that any provisions of MUSL or of MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, he/she shall recommend to the Lottery Commission that the Lottery end its membership with MUSL or with the specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.A.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 14, and unless the context in this Rule 14.A otherwise requires:

- A. "Advance Play" means the ability to purchase tickets for more than one drawing.
- B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.

- C. "Drawing" means the event that occurs wherein the official "POWERBALL®" numbers are drawn.
- D. "Game Board(s)" or "Board(s)" means that area of the play slip that contains a set of two (2) grids. The first grid containing sixty-nine (69) squares numbered one (1) through sixty-nine (69) and the second grid containing twenty-six (26) squares, numbered one (1) through twenty-six (26).
- E. "Grand Prize" means a pari-mutuel prize that is advertised to be paid with per-winner annuities or as a lump sum cash payment, unless otherwise specified by the Lottery.
- F. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.
- G. "Matching Combinations" means the numbers on a play that coincide with the numbers randomly selected at a drawing for which that play was purchased.
- H. "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the Party Lotteries.
- I. "MUSL Board" means the governing body of MUSL, which is comprised of the chief executive officer of each Party Lottery.
- J. "Number" means any play integer from one (1) through sixty-nine (69) inclusive.
- K. "Play" means the six (6) numbers selected on each Board and printed on the ticket.
- L. "Play slip" means a mark-sense game card used by players of "POWERBALL®" to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.
- M. "Prize Amount" means the pari-mutuel and/or set prize values established for a game.
- N. "Prize Category" means and refers to a specific prize within the prize pool.
- O. "Prize Pool" means a defined percentage of sales as specified in this rule.
- P. "Quick Pick" or "Partial Quick Pick" means a number or numbers that are randomly generated by the computer when all or a portion of the player's selections have been left blank.
- Q. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the Grand Prize category, that is not won, that is carried forward to the Grand Prize category for the next drawing.
- R. "Set Prize" means all other prizes except the Grand Prize that are advertised to be paid by a single cash payment and, except in instances outlined in these rules, will be equal to the prize amount established within the Specific Game Playing Rules.
- S. "Set Prize Pool" means an account held by MUSL that holds the temporary balances, transferred to MUSL from party lotteries, which results from having fewer-than-expected winners in the set prize categories. This money is paid out to party lotteries in subsequent drawings that have more winners than are statistically expected in the set prize categories.

- T. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.
- U. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of sixty-nine (69) numbers and the last one (1) from a separate field of twenty-six (26) numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a multi-state Jackpot Game ticket.

14.A.3 Price of "POWERBALL®" Play/Board

The price of each "POWERBALL®" play/board shall be \$2.00.

14.A.4 Ticket Purchases

- A. "POWERBALL®" tickets may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.
- B. "POWERBALL®" tickets shall show, at a minimum, the player's selection of numbers, the boards played, drawing date and validation and reference numbers. The Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a winning ticket.
- C. Plays may be entered manually using the Jackpot Game terminal by a ticket generation option or by means of a play slip provided by the Lottery. Facsimiles of play slips, copies of play slips, or other materials which are inserted into the terminal's play slip reader and which are not printed or approved by the Lottery shall not be used to enter a play. No device shall be connected to a Jackpot Game terminal to enter plays, except as may be approved by the Lottery. Unapproved play slips or other devices may be seized by the Lottery.
- D. All plays made in the game shall be marked on the play slip by hand. No machine-printed play slips shall be used to enter plays. Machine-printed play slips may be seized by the Lottery. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

14.A.5 Play for "POWERBALL®"

- A. A "POWERBALL®" player must select six numbers in each play, five (5) numbers out of sixty-nine (69) plus one (1) out of twenty-six (26). A winning play is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn by the Lottery. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.
- B. The player will use play slips, as provided in Paragraph 14.A.4 of this Rule 14.A, to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding play(s). If a play slip is not available, the Jackpot Game licensee may enter the selected numbers via the keyboard. If offered by the Lottery, a player may leave all or a portion of his/her play selections to a random number generator operated by the computer, commonly referred to as "QUICK PICK" or "PARTIAL QUICK PICK."

14.A.6 Prizes For "POWERBALL®"

A. Odds of winning a prize are displayed in the table below:

MATCHING COMBINATIONS	PRIZECATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of second set	Grand Prize	1:292,201,338.0000
All five (5) of first set plus none of second set	Second Prize	1:11,668,053.5200
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:913,129.1813
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:36,525.1673
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:14,494.1140
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:579.7646
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:701.3281
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:91.9775
None of first set plus one (1) of second set	Ninth Prize	1:38.2339
Overall odds of winning any prize		1:24.8671

B. The prize pool contribution for all prize categories shall consist of fifty percent (50%) of each drawing period's sales unless, as described in Paragraph 14.A.7.C of this Rule 14.A, the prize reserve accounts are not funded at the balances set by the "POWERBALL®" Product Group. All

prize payouts are made with the following expected prize payout percentages, although the prize payout percentage per draw may vary.

PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool Percentage of Sales
Grand Prize	Announced Jackpot	68.0131%	34.0066%
Second Prize	\$1,000,000	8.5558%	4.2279%
Third Prize	\$50,000	5.4756%	2.7378%
Fourth Prize	\$100	0.2738%	0.1369%
Fifth Prize	\$100	0.6900%	0.3450%
Sixth Prize	\$7	1.2074%	0.6037%
Seventh Prize	\$7	0.9982%	0.4991%
Eighth Prize	\$4	4.3488%	2.1744%
Ninth Prize	\$4	10.4374%	5.2187%
TOTAL		100.00%	50.00%

- C. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards matching all five (5) of the first set plus one (1) of the second set. Except as provided in 14.A.7.E.4. below, all other prizes awarded shall be paid as set prizes with the foregoing expected prize payout percentages.

14.A.7 Prize Reserve and Prize Pool Accounts

- A. The MUSL Board manages two (2) prize reserve accounts associated with the "POWERBALL® product group. The MUSL Board holds the reserves in trust on behalf of the Lottery, and interest is earned by the Lottery. When a lottery becomes a member of the POWERBALL® product group, the MUSL Board determines an initial contribution to be made by the lottery to the reserves. In accordance with the payment plan established between the lottery and MUSL, the lottery must deposit with the MUSL board the specified amounts. All deposits are reported on Lottery records as "Cash Held by MUSL" or "Pre-Paid Prize Expense with MUSL".
1. Prize Reserve Account (PRA) is used to guarantee payment of valid, but unanticipated, grand prize claims that may result from a system error or for any other reason the normal contributions from sales are not adequate.
 2. Set Prize Reserve Account (SPRA) is used to fund deficiencies in the payment of the set cash prizes.

- B. The MUSL Board manages multiple prize pool accounts associated with the "POWERBALL®" product group. The Powerball Product Group sets the contribution rates for the following prize pool accounts.
1. Grand Prize Pool is used to fund the current Grand Prize.
 2. Set Prize Pool is used to fund the Set Prizes and holds the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories.
 3. Set-Aside Pool is used to fund the payment of the awarded minimum starting annuity Grand Prizes and minimum annuity Grand Prize increase, if necessary as may be set by the Powerball Product Group.
 4. Grand Prize Carry Forward Pool is used to fully fund the starting minimum annuity Grand Prize, as may be set by the Product Group, if such funds are available.
- C. The above prize reserve accounts and the Set-Aside Pool shall have maximum balance amounts that are set by the Product Group, which are subject to review by the MUSL Board Finance and Audit Committee.
- D. The maximum contribution rate to the Grand Prize Pool shall be 68.0131% of the prize pool (34.0066% of sales). An amount up to five percent (5%) of a Party Lottery's sales shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in one or more prize pool accounts and prize reserve accounts held by the Product Group (hereinafter the "prize pool and reserve deduction") at any time that the prize pool accounts and Party Lottery's share of the prize reserve accounts(s) is below the amounts designated by the Product Group. An additional amount up to twenty percent (20%) of a Party Lottery's sales shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in the Grand Prize Carry Forward Pool (CFP) to be held by the Product Group at a time as determined by the Product Group.
- E. The set prize pool shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of all party lotteries' set prizes (as multiplied by the respective Power Play multiplier if applicable) awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:
1. the amount allocated to the Powerball Set Prizes and carried forward from previous draws, if any;
 2. if the set prize payout variance account is not sufficient to pay the set prizes awarded, an amount from the set prize reserve account is used, if available, not to exceed an amount established by MUSL;
 3. other amounts as agreed to by the Product Group in their sole discretion;
 4. If after these sources are depleted, sufficient funds do not exist to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels.

- F. The Product Group may determine to expend all or a portion of the funds in the Powerball prize pool accounts (except the Grand Prize pool account and the Grand Prize Carry Forward Pool) and the prize reserve accounts, (1) for the purpose of indemnifying the Party Lotteries and Licensee Lotteries in the payment of prizes to be made by the Selling Lotteries; and (2) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval of the Board's Finance & Audit Committee. The Grand Prize Carry Forward Pool may only be expended to pay Powerball prizes.
- G. Any amount remaining in the prize pool accounts or prize reserve accounts at the end of this game shall be returned to the lotteries participating in the accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

14.A.8 Prize Payment

- A. The Grand Prize is paid by the Lottery upon receipt of funds from MUSL no earlier than thirteen (13) calendar days of validation of the Grand Prize ticket; and when the player makes their final selection of cash or annuity no later than sixty (60) days after validation of the Grand Prize ticket.
 - 1. Grand Prizes shall be paid, at the election of the ticket bearer by a single cash payment or in a series of annuity payments. The ticket bearer becomes entitled to the prize at the time the prize is validated as a winner. The election to take the cash payment or annuity payments may be made at the time the prize is validated or within 60 days after the ticket bearer becomes entitled to the prize. An election made after the ticket bearer becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed. If the ticket bearer does not make the election at the time the prize is validated and requests the 60-day election period, the Lottery will cancel the prize warrant that was generated during validation. The validation record will be kept secured and on file at the Lottery office until the ticket bearer makes an election. If the ticket bearer does not make the payment election within 60 days after validation, then the prize shall be paid as an annuity prize.
 - 2. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all boards matching all five (5) of the first set plus one (1) of the second set of drawn numbers. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by a process as approved by the MUSL Board. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to Paragraph 14.A.8.G. of this Rule 14.A. If individual shares of the cash held to fund an annuity are less than \$250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool.
 - 3. All annuitized prizes shall be paid annually in thirty (30) graduated payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.
 - 4. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Lottery no earlier than the thirteenth

calendar day (or the next banking day if the thirteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

5. The Grand Prize amount held by MUSL for subsequent payment to an annuity winner shall be transferred to the Lottery and the Lottery shall have payment to the annuity winner on the anniversary date, or if such date falls on a non-business day the first day following the anniversary date, of the selection of the jackpot winning numbers.
 6. In the event of the death of a lottery winner during the annuity payment period, the "POWERBALL®" Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") to the Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If the Product Group makes such a determination, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Product Group.
- B. The Director's decision with respect to the validation and payment of set prizes, whether during a "POWERBALL®" game or any drawing related thereto, shall be final and binding upon all participants in the Lottery.
 - C. All set prizes (all prizes except the Grand Prize) shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.
 - D. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners.
 - E. Set Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.
 - F. If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall rollover and be added to the Grand Prize pool for the following drawing.
 - G. The "POWERBALL®" Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the "POWERBALL®" Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between drawings is offered by the "POWERBALL®" Product Group, then the Grand Prize shares shall be determined as follows:
 1. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners.
 2. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the MUSL Annuity Factor shall be utilized to determine the cash pool. The cost of the annuitized prize(s) will

be determined at the time the annuity is purchased through a process as approved by the MUSL Board.

3. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the MUSL annuity factor.
- H. All liabilities for a Powerball prize are discharged upon payment of a prize claim. A prize claimant agrees, as its sole and exclusive remedy that claims arising out of a Powerball Play can only be pursued against the Selling Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Powerball Play was purchased and only against the Selling Lottery that issued the play. No claim shall be made against any other Participating Lottery or against the MUSL.

Nothing in these Rules shall be construed as a waiver of any defense or claim the Selling Lottery which issued the Play, any other Participating Lottery or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against the Selling Lottery, any other Participating Lottery or MUSL, or their respective officers, directors or employees.

All decisions made by a Selling Lottery, including the declaration of prizes and the payment thereof and the interpretation of Powerball Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Powerball Play was issued.

Unless the laws, rules, regulations, procedures, and decisions of the Lottery which issued the Play provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of these Rules or the laws, rules, regulations, procedures, and decisions of that Selling Lottery; any such prize claimed but unpaid shall constitute an unclaimed prize under these Rules and the laws, rules, regulations, procedures, and decisions of that Selling Lottery.

14.A.9 Prize Accounts

- A. The Lottery shall transfer to the MUSL in trust an amount as determined to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Lottery.
- B. Grand Prize amounts held by MUSL shall be transferred to the Lottery immediately after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.
- C. All funds to pay a grand prize that go unclaimed shall be returned to the Lottery by MUSL in proportion to sales by the Lottery for the grand prize in question after the claiming period set by the Lottery selling the winning ticket expires.

14.A.10 Funds Transfer

- A. Funds shall be collected by MUSL from each Party Lottery weekly by wire transfer or other means acceptable to the "POWERBALL®" Product Group. The "POWERBALL®" Product Group shall determine collection days. The amount to be transferred shall be calculated in accordance with game rules. The draw reports determine whether the member lotteries owe funds to MUSL or MUSL needs to transfer money to the member lotteries. Each Party Lottery shall transfer to

MUSL an amount as determined by MUSL and the Product Group to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Party Lottery.

- B. The Grand Prize amount held by MUSL shall be transferred to the Lottery after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.
- C. The Grand Prize amount held by MUSL for subsequent payment to annuity winners shall be transferred to the Lottery within seven days preceding the anniversary date of the selection of the jackpot winning numbers. The Lottery will then make payment to the annuity winner.

14.A.11 Drawings

- A. The "POWERBALL®" drawings shall be held twice each week on Wednesday and Saturday evenings, except that the drawing schedule may be changed by the MUSL Board. In the event of and act of Force Majeure the drawing shall be rescheduled at the discretion of the MUSL Board.
- B. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. The Lottery Commission shall review and approve drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MUSL in accordance with the "POWERBALL®" drawing guidelines. The winning numbers shall be used in determining all "POWERBALL®" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.
- C. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.
- D. The drawing shall not be invalidated due to the numbers drawn creating an excessive prize liability for the Lottery.
- E. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.A.12 Advance Play

Advance play provides the opportunity to purchase "POWERBALL®" tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

14.A.13 MUSL Accounting and Finance

- A. At the time a Lottery joins the "POWERBALL®" Product Group, MUSL revises the existing budget and assesses the Lottery for the additional costs. Each July, thereafter, MUSL sets the budget for the impending year and assesses each Lottery their proportionate share. The Lottery receives a copy of these costs and an election form.
- B. Each September and March, MUSL re-evaluates the amounts that each Lottery must contribute to any Prize Reserves. Any additional contributions to the Prize Reserves are funded by reducing the contribution from sales to the Grand Prize as referred to in 14.A.7.

- C. The draw reports determine whether the Lottery owes and needs to transfer funds to MUSL, or MUSL owes and needs to transfer funds to the Lottery. (The procedures and corresponding time lines documenting the timely and effective transfer of funds between the Lottery and MUSL can be found in the Lottery's financial procedures.) Three different transfers are made on a continual basis:

1. Draw receivables transferred from the Lottery to MUSL,
2. Set prize payments and initial Grand Prize payments transferred from MUSL to the Lottery, and
3. Subsequent Grand Prize annuity payments from MUSL to the Lottery.

14.A.14 Jackpot Game Licensee Commission, Cashing Bonus, Selling Bonus, and Marketing Performance Bonus

- A. In addition to the Six Percent (6%) Commission set forth in Rule 14.19, retailers can earn a Cashing Bonus, Selling Bonus and Marketing Performance Bonus.

1. Each retailer will receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including \$599.
2. In order to receive a Selling Bonus, the following criteria must be met:
 - a. A licensee must have sold a grand-prize or second-prize winning multi-state Jackpot game ticket for a drawing for which the announced jackpot prize is at least forty million dollars (\$40,000,000) or more;
 - b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.
 - c. A licensee must be selling multi-state Jackpot Game tickets up to and including the day that the ticket is validated by the Lottery and must be the same licensed licensee who sold the winning ticket.
 - d. The Director or designee shall determine the amount of the jackpot-selling bonus for each qualified-prize-winning ticket sold.
3. In order to receive a five-tenths of one percent (.5%) Marketing Performance Bonus the following criteria must be met:
 - a. A licensee must be licensed on the date the marketing performance bonus is declared;
 - b. A licensee must sell Lottery products up to and including on the final sales day in which the marketing performance bonus is declared;
 - c. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.

- B. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.A.14.A.1) and/or the five-tenths of one percent (.5%) marketing bonus (14.A.14.A.3) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 14.A.14.A.2 or may revert the excess amount thereby decreasing the bonus expense.

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Tracking number: 2016-00337

Opinion of the Attorney General rendered in connection with the rules adopted by the

Lottery Commission

on 08/26/2016

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 08/26/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 02, 2016 14:49:31

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-7

Rule title

3 CCR 713-7 Rule 400 - RULES AND REGULATIONS REGARDING THE LICENSURE
OF AND PRACTICE BY PHYSICIAN ASSISTANTS (PAS) 1 - eff 10/15/2016

Effective date

10/15/2016

COLORADO MEDICAL BOARD RULES

Rule 400
3 CCR 713-7

RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY PHYSICIAN ASSISTANTS (PAS)

INTRODUCTION

BASIS: The authority for promulgation of Rule 400 (“these Rules”) by the Colorado Medical Board (“Board”) is set forth in Sections 24-4-103, 12-36-104(1)(a), 12-36-106(5) and 12-36-107.4, C.R.S.

PURPOSE: The purpose of these rules and regulations is to implement the requirements of Section 12-36-107.4 and 12-36-106(5) and provide clarification regarding the application of these rules to various practice settings.

SECTION 1. QUALIFICATIONS FOR LICENSURE APPLICATION

A. To apply for a license, an applicant shall submit:

1. A completed Board-approved application and required fee; and
2. Proof of satisfactory passage of the national certifying examination for assistants to the primary care physician administered by the National Commission on Certification of Physician Assistants.

SECTION 2. EXTENT AND MANNER IN WHICH A PHYSICIAN ASSISTANT MAY PERFORM DELEGATED TASKS CONSTITUTING THE PRACTICE OF MEDICINE UNDER PERSONAL AND RESPONSIBLE DIRECTION AND SUPERVISION

A. Responsibilities of the Physician Assistant

1. Compliance with these Rules. A physician assistant and the physician assistant’s supervising physician are responsible for implementing and complying with statutory requirements and the provisions of these Rules.
2. License. A physician assistant shall ensure that his or her license to practice as a physician assistant is active and current prior to performing any acts requiring a license.

COLORADO MEDICAL BOARD RULES

3. Registration. A physician assistant shall ensure that a form in compliance with Section 4 of these Rules is on record with the Board.

4. Nameplate. While performing acts defined as the practice of medicine, a physician assistant shall wear a nameplate with the non-abbreviated title “physician assistant” clearly visible.

5. 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 12-36-106(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 name of the physician consulted and the date of the consultation.

6. Documentation. A physician assistant shall keep such documentation as necessary to assist the supervising physician in performing an adequate performance assessment as set forth below in Section 2(C)(6) of these Rules.

7. Acute Care Hospital Setting

a. Physician assistants performing delegated medical functions in an acute care hospital setting must comply with the requirements of Section 12-36-106(5)(b)(II), C.R.S.

b. For purposes of this section, “reviewing the medical records” means review and signature by the primary physician supervisor or a secondary physician supervisor.

B. Types of Physician Supervisors and Scope and Authority to Delegate

1. Four Physician Assistant Limit. Except as otherwise provided in Section 2(E) of these Rules, no physician shall be the primary physician supervisor for more than four specific, individual physician assistants. The names of such physician assistants shall appear on the form in compliance with Section 4 of these Rules. The primary physician supervisor may supervise additional physician assistants other than those who appear on the form in compliance with Section 4 of these Rules. In other words, a primary physician supervisor may also be a secondary physician supervisor, as set forth below, for additional physician assistants so long as such supervision is in compliance with these Rules.

COLORADO MEDICAL BOARD RULES

2. Primary Physician Supervisor. Except as set forth in Section 2(B)(3) of these Rules, a physician licensed to practice medicine by the Board may delegate to a physician assistant licensed by the Board the authority to perform acts that constitute the practice of medicine only if a form in compliance with Section 4 of these Rules is on record with the Board. The physician whose name appears on the form in compliance with Section 4 of these Rules shall be deemed the “primary physician supervisor”. The supervisory relationship shall be deemed to be effective for all time periods in which a form in compliance with Section 4 of these Rules is on file with the Board.

a. A physician assistant shall have at least one primary physician supervisor for each employer. If the employer is a multi-specialty organization, e.g., a multi-specialty practice, hospital, hospital system or health maintenance organization, the physician assistant shall have a primary supervisor, duly registered with the Board, per specialty practice area when performing delegated tasks consistent with the delegating physician’s education, training, experience, and active practice.

3. Secondary Physician Supervisors. A physician licensed to practice medicine by the Board, other than the supervisor whose name appears on the form in compliance with Section 4 of these Rules, may delegate to a physician assistant licensed by the Board the authority to perform acts which constitute the practice of medicine only as permitted by Section 2(D) of these Rules. Such physician shall be termed a “secondary physician supervisor”. Secondary physician supervisors do not need to be registered with the Board.

4. Delegation of Medical Services. Delegated services must be consistent with the delegating physician’s education, training, experience and active practice. Delegated services must be of the type that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate. A physician may only delegate services that the physician is qualified and insured to perform and services that the physician has not been restricted from performing. Any services rendered by the physician assistant will be held to the same standard that is applied to the delegating physician.

C. Responsibilities of and Supervision by the Primary Physician Supervisor

1. Compliance with these Rules. Both the supervising physician and the physician assistant are responsible for implementing and complying with the

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statutory requirements and the provisions of these Rules.

2. Liability for Actions of a Physician Assistant. A primary physician supervisor may supervise and delegate responsibilities to a physician assistant in a manner consistent with the requirements of these Rules. Except as provided in Sections 2(B)(3) and 2(D) of these Rules, the primary physician supervisor shall be deemed to have violated these Rules if a supervised physician assistant commits unprofessional conduct as defined in Section 12-36-117(1)(p), C.R.S., or if such physician assistant otherwise violates these Rules. The primary physician supervisor shall not be responsible for the conduct of a physician assistant where that physician assistant was acting under the supervision of another primary physician supervisor and there is a form in compliance with Section 4 of these Rules signed by that other primary physician supervisor. The primary physician supervisor shall also not be responsible for the conduct of a physician assistant where that physician assistant consulted with a secondary physician supervisor and documented such consultation in the chart note as required under Section 2(A)(5) of these Rules.

3. License Status. Before authorizing a physician assistant to perform any medical service, the supervising physician should verify that the physician assistant has an active and current Colorado license issued by the Board.

4. Qualifications. Before authorizing a physician assistant to perform any medical service, the supervising physician is responsible for evaluating the physician assistant's education, training and experience to perform the service safely and competently.

5. Supervision

a. New physician assistant graduates - Must meet all of the following:

(1) For the first six months of employment and a minimum of 500 patient encounters, a physician supervisor shall review the chart for every patient seen by the physician assistant no later than seven days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that

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reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(2) Additionally, a primary or secondary supervising physician of a new physician assistant graduate must provide on-site supervision of the new physician assistant graduate for that physician assistant's first 1000 working hours.

(3) The supervising physician must complete a performance assessment as outlined in Section 2(C)(6) of these Rules by the end of the first six months of employment and quarterly thereafter for the first two years of employment. After the physician assistant has been working for more than two years, performance assessments must be completed twice each 12-month period for an additional three years.

b. Experienced Physician Assistants New to a Practice Setting:

(1) The term "New to a Practice Setting" means for the purposes of this Rule:

(i) The change of the primary supervising physician and practice; or

(ii) A substantive change in scope of practice or practice area.

(2) Based on the years of active practice by the Physician Assistant, the following minimum activities must be performed:

(i) A Physician Assistant with less than six months experience:

Follow new graduate requirements as set forth in Section 5(a) until the PA reaches a total of six months experience as a PA.

(ii) A Physician Assistant with more than six months but with less than five years' experience:

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For the first three months of employment and a minimum of 500 patient encounters, a physician supervisor shall review the chart for every patient seen by an experienced physician assistant new to a practice setting no later than 14 days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(iii) A Physician Assistant with five years and less than 10 years' experience:

For the first two months of employment and a minimum of 250 patient encounters, a physician supervisor shall review the chart for every patient seen by an experienced physician assistant new to a practice setting no later than 14 days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(iv) A Physician Assistant with 10 years or more experience:

For a minimum of 100 patient encounters, a physician supervisor shall review the chart for every patient seen by an experienced physician assistant new to a practice setting no later than 14

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days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(3) The supervising physician must complete a performance review for all physician assistants with less than 5 years' experience in accordance with Section 2(C)(5)(a)(3). For all other physician assistants new to a practice setting, the supervising physician must complete a performance review by the end of the first six months and once each 12- month period thereafter.

(4) On site supervision for an experienced physician assistant, as defined in Section 2(C)(5)(b) and (c) of these Rules, is not required; instead it is at the discretion of the supervising physician.

c. All other Physician Assistants:

(1) The supervising physician shall meet with the physician assistant a minimum of one time during each 12-month period and conduct a performance assessment as set forth in Section 2(C)(6) of these Rules.

(2) On site supervision for an experienced physician assistant, as defined in Section 2(C)(5)(b) of these Rules, is not required; instead it is at the discretion of the supervising physician.

6. Performance Assessment

a. A physician who supervises a physician assistant shall develop and carry out a periodic performance assessment as required by these Rules to assist in evaluating and maintaining the quality of care provided by a

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physician assistant. The performance assessment must include but need not be limited to:

- (1) An assessment of the medical competency of the physician assistant;
- (2) A review and initialing of selected charts;
- (3) An assessment of a representative sample of the referrals or consultations made by the physician assistant with other health professionals as required by the condition of the patient;
- (4) An assessment of the ability of the physician assistant to take a medical history from and perform an examination of patients representative of those cared for by the physician assistant; and
- (5) Maintenance by the supervising physician of accurate records and documentation of the performance assessments for each physician assistant supervised.

b. The Board may audit a supervising physician's performance assessment records. Upon request, the supervising physician shall produce records of the performance assessments as required by the Board.

7. Availability of the physician supervisor

- a. The supervising physician must provide adequate means for communication with the physician assistant.
- b. If not physically on site with the physician assistant, the primary or secondary physician supervisor must be readily available by telephone, radio, pager, or other telecommunication device.

D. Responsibilities of the Secondary Physician Supervisor

1. If a physician who is not the primary physician supervisor consults with a physician assistant regarding a particular patient, the physician is a secondary physician supervisor. The physician assistant must document the consultation

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date and name of all physicians consulted in the patient chart.

2. Such physician shall be deemed to be responsible for any action or omission involving the practice of medicine supervised by the secondary physician supervisor involving the particular patient.

E. Waiver of Provisions of these Rules

1. Criteria for Obtaining Waivers.

a. Upon a showing of good cause, the Board may permit waivers of ANY provision of these Rules.

b. 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 distant from the physician supervisor; 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 supervisor or the physician assistant; and whether the physician assistants in question work less than a full schedule.

c. It is anticipated that waivers may be granted to permit a physician supervisor to supervise more than four physician assistants provided the Full Time Employee Equivalent is not more than four FTE and the physician is not supervising more than four physician assistants at any one time.

d. 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.

2. Procedure for Obtaining Waivers.

a. Applicants for waivers must submit a written application on forms approved by the Board detailing the basis for the waiver request.

b. The written request should address the pertinent factors listed in Section 2(E)(1)(b) of these Rules and include a copy of any written protocols in place for the supervision of physician assistants.

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c. Upon receipt of the waiver request and documentation, the matter will be considered at the next available Board meeting.

d. If a waiver to the four physician assistant limit is granted, the primary supervising physician must submit a revised form in compliance with Section 4 of these Rules containing the names of all physician assistants to be supervised before the waiver shall become effective.

SECTION 3. PRESCRIPTION AND DISPENSING OF DRUGS.

A. Prescribing Provisions:

1. A physician assistant may issue a prescription order for any drug or controlled substance provided that:

a. Each prescription and refill order is entered on the patient's chart.

b. Each written prescription order shall be signed by the physician assistant and shall contain in legible form the name, address and telephone number of the supervising physician and the name of the physician assistant.

c. Each written prescription for a controlled substance shall contain, in legible form, the name of the physician assistant and the name, address and telephone number of the supervising physician.

d. For all other written prescriptions issued by a physician assistant, the physician assistant's name and the address of the health facility where the physician assistant is practicing must be imprinted on the prescription.

i. 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.

e. Nothing in this Section 3 of these Rules shall prohibit a physician supervisor from restricting the ability of a supervised physician assistant to prescribe drugs or controlled substances.

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f. 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.

g. For the purpose of this Rule electronic prescriptions are considered written prescription orders.

2. Physician assistants shall not write or sign prescriptions or perform any services that the supervising physician for that particular patient is not qualified or authorized to prescribe or perform.

B. Obtaining Prescription Drugs or Devices to Prescribe, Dispense, Administer or Deliver

1. 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 supervising physician, pharmacist or pharmaceutical representative.

2. 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 supervising physician, pharmacist or pharmaceutical representative.

SECTION 4. REPORTING REQUIREMENTS

A. Supervisory Form.

1. Any person wishing to form a supervisory relationship in conformance with these Rules shall file with the Board a form as required by the Board.

2. The form shall be signed by the primary physician supervisor and the physician assistant or assistants for whom the physician intends to be the primary physician supervisor.

3. Except as provided by Board waiver, no primary physician supervisor shall be a primary physician supervisor for more than four specific, individual physician assistants.

4. Except as provided by Board waiver, the names of no more than four

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individual physician assistants shall appear on the form in compliance with this Section of these Rules.

5. The supervisory relationship acknowledged in the form shall be deemed to continue for purposes of these Rules until specifically rescinded by either the physician assistant or the primary physician supervisor in writing.

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

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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

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Tracking number: 2016-00341

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/18/2016

3 CCR 713-7

**Rule 400 - RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY
PHYSICIAN ASSISTANTS (PAS)**

The above-referenced rules were submitted to this office on 08/22/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 01, 2016 13:34:10

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-8

Rule title

5 CCR 1001-8 REGULATION NUMBER 6 STANDARDS OF PERFORMANCE FOR
NEW STATIONARY SOURCES 1 - eff 10/15/2016

Effective date

10/15/2016

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 6

Standards of Performance for New Stationary Sources

5 CCR 1001-8

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

PART A

Federal Register Regulations Adopted by Reference

The regulations promulgated by the United States Environmental Protection Agency listed below, found in Part 60, Chapter I, Title 40 of the Code of Federal Regulations (CFR) and in effect as of the dates indicated, but not including later amendments, were adopted by the Colorado Air Quality Control Commission and are hereby incorporated by reference. Copies of the material incorporated by reference are available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys.

All new sources of air pollution and all modified or reconstructed sources of air pollution shall comply with the standards, criteria, and requirements set forth herein. For the purpose of this regulation, the word "Administrator" as used in Part 60, Chapter I, Title 40, of the CFR shall mean the Colorado Air Pollution Control Division, except that in the sections in Table 1, "Administrator" shall mean both the Administrator of the Environmental Protection Agency or his authorized representative and the Colorado Air Pollution Control Division.

TABLE 1

40 CFR Part 60 Subpart*	Section(s)
A	60.8(b)(2) and (b)(3) and those sections throughout the standards that reference 60.8(b)(2) and (b)(3), 60.11(b) and (e).
Da	60.45a.
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b (e)(3)(iii) and (e)(3)(iv), 60.116b(f)(2)(iii).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3), 60.335(a).

40 CFR Part 60 Subpart*		Section(s)
VV	60.482-1(c)(2), 60.484.	
WW	60.493(b)(2)(i)(A), 60.496(a)(1).	
XX	60.502(e)(6).	
GGG	60.592(c).	
JJJ	60.623.	
KKK	60.634.	

*And any other section which 40 CFR Part 60 specifically states will not be delegated to the States.

Subpart A General Provisions. 40 CFR Part 60, Subpart A (July 1, 2015).

(See Part B of this Regulation Number 6 for Additional Requirements Regarding Modifications)

Subpart Cb Emission Guidelines and Compliance Times for Existing Sources: Municipal Waste Combustors That Are Constructed On or Before September 20, 1994. 40 CFR Part 60, Subpart Cb (July 1, 2015).

Subpart Cc Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. 40 CFR Part 60, Subpart Cc (July 1, 2015).

In addition for clarification regarding requirements applicable to existing municipal solid waste landfills, designated facilities as defined in 40 CFR Part 60, Section 60.32c which meet the condition in 40 CFR Part 60, Section 60.33c(a)(1) shall submit to the Division an initial design capacity report and an initial emission rate report in accordance with 40 CFR Part 60, Section 60.757 within 90 days of the effective date of this regulation. If the design capacity report reflects that the facility meets the condition in 40 CFR Part 60, Section 60.33c(a)(2) and the initial NMOC emission rate report reflects that the facility meets the condition in 40 CFR Part 60, Section 60.33c(a)(3), the facility shall comply with the collection and control system requirements in 40 CFR Part 60, Section 60.752(b)(2)(ii), applicable control device requirements in 40 CFR Part 60, Section 60.33c(c)(1), (2) and (3), test methods and procedures requirements in 40 CFR 60.754, operational standards in 40 CFR Part 60, Section 60.753, compliance provisions in 40 CFR Part 60, Section 60.755, monitoring provisions in 40 CFR Part 60, Section 60.756 and reporting and recordkeeping provisions in 40 CFR Part 60, Sections 60.757 and 60.758, respectively. Such facilities must complete installation of air emission collection and control equipment capable of meeting the requirements of this subpart no later than 30 months from the effective date of these requirements or the date on which the source becomes subject to this subpart pursuant to 40 CFR Part 60, Section 60.36c(b) (the date on which the condition in 60.33c(a)(3) is met (i.e., the date of the first annual report in which the non-methane organic compounds emission rate equals or exceeds 50 megagrams per year)), whichever occurs later. These facilities must submit a final collection and control system design plan pursuant to 40 CFR Part 60, Section 60.757(c) within one year of the effective date of these requirements, which must be reviewed and approved by the state. The final collection and control system design plan must specify: (1) the date by which contracts for control systems/process modifications shall be awarded, (which shall be no later than 20 months after the effective date); (2) the date by which on-site construction or installation of the air pollution control device(s) or process changes will begin, (which shall be no later than 24 months after the effective date); and (3) the date by which the construction or installation of the air pollution control device(s) or process changes will be complete (which shall be no later than 30 months after the effective date). In addition, the plan shall include site-specific design plans for the gas collection and control system(s). These facilities shall comply with the approved

final collection and control system design plan and shall demonstrate compliance with these emission standards in accordance with 40 CFR Part 60, Section 60.8 not later than 180 days following initial startup of the collection and control system. The Commission designates the effective date for these requirements applicable to designated facilities, including the state emission standard for existing municipal solid waste landfills, as the date on which the United States Environmental Protection Agency promulgates a final rule approving the state plan under Section 111(d) of the Clean Air Act.

Subpart Ce Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators. 40 CFR Part 60, Subpart Ce, paragraphs 60.30e; 60.31e; 60.32e; 60.33e(a)(1)-(3), (b)(1)-(2), (c)(1)-(2); 60.34e (referencing 40 CFR Part 60 Subpart Ec Section 60.53c); 60.35e (referencing 40 CFR Part 60 Subpart Ec Section 60.55c); 60.36e(a)(1)-(2), (c)(1)-(2); 60.37e(a) (referencing 40 CFR Part 60 Subpart Ec Section 60.56c), (a)(1)-(2), (b) (referencing 40 CFR Part 60 Subpart Ec Section 60.56c), (b)(1)-(2), (c)(1)-(4), (d) (referencing 40 CFR Part 60 Subpart Ec Section 60.57c), (e)(1)-(3), (f); 60.38e(a) (referencing 40 CFR Part 60 Subpart Ec Section 60.58c(b)-(g)), (a)(1)-(2), (b)(1)-(2) (July 1, 2015).

The Commission designates the effective date for these emission limits and other requirements (see Colorado 111(d) plan for Existing Hospital/Medical/Infectious Waste Incinerators in Colorado, adopted August 20, 2015, and obtainable from the Air Quality Control Commission Office, for applicable emission limits, compliance times, and other requirements) applicable to designated facilities as the date on which the United States Environmental Protection Agency promulgates a final rule in 40 CFR Part 62, Subpart G approving the state plan under Section 111(d) of the Clean Air Act.

Subpart D Standards of Performance for Fossil-Fuel-Fired Steam Generators for which Construction is Commenced after August 17, 1971. 40 CFR Part 60, Subpart D (July 1, 2015).

Subpart Da Standards of Performance for Electric Utility Steam Generators for which Construction is Commenced after September 18, 1978. 40 CFR Part 60, Subpart Da (July 1, 2015), as amended April 6, 2016 (*81 FR 201723*).

(See Regulation Number 6, Part B, Section VIII. and Regulation Number 8, Part E, Subpart UUUUU for additional requirements regarding Electric Utility Steam Generating Units)

Subpart Db Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. 40 CFR Part 60, Subpart Db (July 1, 2015).

(See Part B, Section III.D. of this Regulation Number 6 for Additional Requirements)

Subpart Dc Standards of Performance for Small Industrial-Commercial- Institutional Steam Generating Units. 40 CFR Part 60, Subpart Dc (July 1, 2015).

Subpart E Standards of Performance for Incinerators. 40 CFR Part 60, Subpart E (July 1, 2015).

(See Part B, Sections V, VI and VII of this Regulation Number 6 for Additional Requirements)

Subpart Ea Standards of Performance for Municipal Waste Combustors For Which Construction Is Commenced After December 20, 1989 and On or Before September 20, 1994. 40 CFR Part 60, Subpart Ea (July 1, 2015).

Subpart Eb Standards of Performance for Municipal Waste Combustors For Which Construction Is Commenced After September 20, 1994. 40 CFR Part 60, Subpart Eb (July 1, 2015).

(See Part B, Section VI of this Regulation Number 6 for Additional Requirements)

Subpart Ec Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. 40 CFR Part 60, Subpart Ec (July 1, 2015).

(See Part B, Section V of this Regulation Number 6 for Additional Requirements)

Subpart F Standards of Performance for Portland Cement Plants. 40 CFR Part 60, Subpart F (July 1, 2015), as amended July 27, 2015 (*80 FR 44772*) and September 11, 2015 (*80 FR 54728*).

Subpart G Standards of Performance for Nitric Acid Plants. 40 CFR Part 60, Subpart G (July 1, 2015).

Subpart Ga Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011. 40 CFR Part 60, Subpart Ga (July 1, 2015).

Subpart H Standards of Performance for Sulfuric Acid Plants. 40 CFR Part 60, Subpart H (July 1, 2015).

Subpart I Standards of Performance for Hot Mix Asphalt Facilities. 40 CFR Part 60, Subpart I (July 1, 2015).

Subpart J Standards of Performance for Petroleum Refineries. 40 CFR Part 60, Subpart J (July 1, 2015), as amended December 1, 2015 (*80 FR 75178*).

Subpart Ja Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. 40 CFR Part 60, Subpart Ja (July 1, 2015), as amended December 1, 2015 (*80 FR 75178*).

Subpart K Standards of Performance for Storage Vessels for Petroleum Liquids Constructed after June 11, 1973 and prior to May 19, 1978. 40 CFR Part 60, Subpart K (July 1, 2015).

Subpart Ka Standards of Performance for Storage Vessels for Petroleum Liquids Constructed after May 18, 1978, and prior to July 23, 1984. 40 CFR Part 60, Subpart Ka (July 1, 2015).

Subpart Kb Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984. 40 CFR Part 60, Subpart Kb (July 1, 2015).

Subpart L Standards of Performance for Secondary Lead Smelters. 40 CFR Part 60, Subpart L (July 1, 2015).

Subpart M Standards of Performance for Secondary Brass and Bronze Production Plants. 40 CFR Part 60, Subpart M (July 1, 2015).

Subpart N Standards of Performance for Iron and Steel Plants. 40 CFR Part 60, Subpart N (July 1, 2015).

Subpart Na Standards of Performance for Basic Oxygen Process Furnaces. 40 CFR Part 60, Subpart Na (July 1, 2015).

Subpart O Standards of Performance for Sewage Treatment Plants. 40 CFR Part 60, Subpart O (July 1, 2015).

Subpart P Standards of Performance for Primary Copper Smelters. 40 CFR Part 60, Subpart P (July 1, 2015).

- Subpart Q Standards of Performance for Primary Zinc Smelters. 40 CFR Part 60, Subpart Q (July 1, 2015).
- Subpart R Standards of Performance for Primary Lead Smelters. 40 CFR Part 60, Subpart R (July 1, 2015).
- Subpart S Standards of Performance for Primary Aluminum Reduction Plants. 40 CFR Part 60, Subpart S (July 1, 2015).
- Subpart T Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants. 40 CFR Part 60, Subpart T (July 1, 2015), as amended August 19, 2015 (*80 FR 50386*).
- Subpart U Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants. 40 CFR Part 60, Subpart U (July 1, 2015) as amended August 19, 2015 (*80 FR 50386*).
- Subpart V Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants. 40 CFR Part 60, Subpart V (July 1, 2015) as amended August 19, 2015 (*80 FR 50386*).
- Subpart W Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants. 40 CFR Part 60, Subpart W (July 1, 2015) as amended August 19, 2015 (*80 FR 50386*).
- Subpart X Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities. 40 CFR Part 60, Subpart X (July 1, 2015) as amended August 19, 2015 (*80 FR 50386*).
- Subpart Y Standards of Performance for Coal Preparation Plants. 40 CFR Part 60, Subpart Y (July 1, 2015).
- Subpart Z Standards of Performance for Ferroalloy Production Facilities. 40 CFR Part 60, Subpart Z (July 1, 2015).
- Subpart AA Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983. 40 CFR Part 60, Subpart AA (July 1, 2015).
- Subpart AAa Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983. 40 CFR Part 60, Subpart AAa (July 1, 2015).
- Subpart BB Standards of Performance for Kraft Pulp Mills. 40 CFR Part 60, Subpart BB (July 1, 2015).
- Subpart BBa Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2015. 40 CFR Part 60, Subpart BBa (July 1, 2015)
- Subpart CC Standards of Performance for Glass Manufacturing Plants. 40 CFR Part 60, Subpart CC (July 1, 2015).
- Subpart DD Standards of Performance for Grain Elevators. 40 CFR Part 60, Subpart DD (July 1, 2015).
- Subpart EE Standards of Performance for Surface Coating of Metal Furniture. 40 CFR Part 60, Subpart EE (July 1, 2015).

Subpart GG Standards of Performance for Stationary Gas Turbines. 40 CFR Part 60, Subpart GG (July 1, 2015).

(See Subpart KKKK of this Regulation Number 6 for additional requirements for Stationary Combustion Turbines)

Subpart HH Standards of Performance for Lime Manufacturing Plants. 40 CFR Part 60, Subpart HH (July 1, 2015).

Subpart KK Standards of Performance for Lead-Acid Battery Manufacturing Plants. 40 CFR Part 60, Subpart KK (July 1, 2015).

Subpart LL Standards of Performance for Metallic Mineral Processing Plants. 40 CFR Part 60, Subpart LL (July 1, 2015).

Subpart MM Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations. 40 CFR Part 60, Subpart MM (July 1, 2015).

Subpart NN Standards of Performance for Phosphate Rock Plants. 40 CFR Part 60, Subpart NN (July 1, 2015).

Subpart PP Standards of Performance for Ammonium Sulfate Manufacture. 40 CFR Part 60, Subpart PP (July 1, 2015).

Subpart QQ Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing. 40 CFR Part 60, Subpart QQ (July 1, 2015).

Subpart RR Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations. 40 CFR Part 60, Subpart RR (July 1, 2015).

Subpart SS Standards of Performance for Industrial Surface Coating: Large Appliances. 40 CFR Part 60, Subpart SS (July 1, 2015).

Subpart TT Standards of Performance for Metal Coil Surface Coating. 40 CFR Part 60, Subpart TT (July 1, 2015).

Subpart UU Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture. 40 CFR Part 60, Subpart UU (July 1, 2015).

Subpart VV Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction or Modification Commenced after January 5, 1981, and on or Before November 7, 2006. 40 CFR Part 60, Subpart VV (July 1, 2015).

Subpart VVa Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction or Modification Commenced after November 7, 2006. 40 CFR Part 60, Subpart VVa (July 1, 2015).

Subpart WW Standards of Performance for the Beverage Can Surface Coating Industry. 40 CFR Part 60, Subpart WW (July 1, 2015).

Subpart XX Standards of Performance for Bulk Gasoline Terminals. 40 CFR Part 60, Subpart XX (July 1, 2015).

Subpart BBB Standards of Performance for the Rubber Tire Manufacturing Industry. 40 CFR Part 60, Subpart BBB (July 1, 2015).

Subpart DDD Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry. 40 CFR Part 60, Subpart DDD (July 1, 2015).

Subpart FFF Standards of Performance for Flexible Vinyl and Urethane Coating and Printing. 40 CFR Part 60, Subpart FFF (July 1, 2015).

Subpart GGG Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006. 40 CFR Part 60, Subpart GGG (July 1, 2015).

Subpart GGGa Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commences After November 7, 2006. 40 CFR Part 60, Subpart GGGa (July 1, 2015).

Subpart HHH Standards of Performance for Synthetic Fiber Production Facilities. 40 CFR Part 60, Subpart HHH (July 1, 2015).

Subpart III Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. 40 CFR Part 60, Subpart III (July 1, 2015).

Subpart JJJ Standards of Performance for Petroleum Dry Cleaners. 40 CFR Part 60, Subpart JJJ (July 1, 2015).

Subpart KKK Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants. 40 CFR Part 60, Subpart KKK (July 1, 2015).

Subpart LLL Standards of Performance for Onshore Natural Gas Processing: SO₂ Emissions. 40 CFR Part 60, Subpart LLL (July 1, 2015).

Subpart NNN Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations. 40 CFR Part 60, Subpart NNN (July 1, 2015).

Subpart OOO Standards of Performance for Nonmetallic Mineral Processing Plants. 40 CFR Part 60, Subpart OOO (July 1, 2015).

Subpart PPP Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants. 40 CFR Part 60, Subpart PPP (July 1, 2015).

Subpart QQQ Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems. 40 CFR Part 60, Subpart QQQ (July 1, 2015).

Subpart RRR Standards of Performance for Volatile Organic Compounds (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. 40 CFR Part 60, Subpart RRR (July 1, 2015).

Subpart SSS Standards of Performance for the Magnetic Tape Manufacturing Industry. 40 CFR Part 60, Subpart SSS (July 1, 2015).

Subpart TTT Standards of Performance for Industrial Surface Coating of Plastic Parts for Business Machines. 40 CFR Part 60, Subpart TTT (July 1, 2015).

Subpart UUU Standards of Performance for Calciners and Dryers in Mineral Industries. 40 CFR Part 60, Subpart UUU (July 1, 2015).

Subpart VVV Standards of Performance for Polymeric Coating of Supporting Substrates. 40 CFR Part 60, Subpart VVV (July 1, 2015).

Subpart WWW Standards of Performance for Municipal Solid Waste Landfills. 40 CFR Part 60, Subpart WWW (July 1, 2015).

Subpart AAAA Standards of Performance for Small Municipal Waste Combustion Units for which Construction is Commenced after August 30, 1999 or for which Modification or Reconstruction is Commenced after June 6, 2001. 40 CFR Part 60, Subpart AAAA (July 1, 2015).

Subpart CCCC Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced after November 30, 1999 or for which Modification or Reconstruction is Commenced on or after June 1, 2001. 40 CFR Part 60, Subpart CCCC (July 1, 2015).

Subpart DDDD Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999 (July 1, 2015).

Subpart EEEE Standards of Performance for Other Solid Waste Incineration Units for which Construction is Commenced after December 9, 2004 or for which Modification or Reconstruction is Commenced on or after June 16, 2006. 40 CFR Part 60, Subpart EEEE (July 1, 2015).

Subpart FFFF Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction on or before December 9, 2004. 40 CFR Part 60, Subpart FFFF, Sections 60.2991 through 60.2994, 60.3000 through 60.3078, and Tables 1-5 (July 1, 2015).

Subpart HHHH Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. Repealed: This rule was vacated by the February 8, 2008 D.C. Circuit Court of Appeals decision.

Subpart IIII Standards of Performance for Stationary Compression Ignition Internal Combustion Engines. 40 CFR Part 60, Subpart IIII (July 1, 2015).

Subpart KKKK Standards of Performance for Stationary Combustion Turbines. 40 CFR Part 60, Subpart KKKK (July 1, 2015).

(See Subpart GG for additional requirements for Stationary Gas Turbines)

Subpart LLLL Standards of Performance for New Sewage Sludge Incineration Unit. 40 CFR Part 60, Subpart LLLL (July 1, 2015).

Subpart MMMM Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units. 40 CFR Part 60, Subpart MMMM (July 1, 2015).

Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution. 40 CFR Part 60, Subpart OOOO, (July 1, 2015), as amended August 12, 2015 (*80 Fed. Reg. 48262*).

APPENDIX A to Part 60 Test Methods. 40 CFR Part 60 (July 1, 2015).

Purpose

Adoption of the federal rules in 40 C.F.R. Part 60, Subparts Da, F, T, U, V, W, J, Ja, OOOO, and Appendix B, makes these rules and revisions enforceable under Colorado law. Additionally, revisions to Subpart Ce, allow the Division to implement and enforce the Emission Guidelines and Compliance Times for HMIWI contained in 40 C.F.R. Part 60, Subpart Ce. Adoption of the rules will not impose additional requirements upon sources beyond the minimum required by federal law and may benefit the regulated community by providing sources with up-to-date information.

Further, these revisions will correct any typographical, grammatical and formatting errors found within the regulation.

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Tracking number: 2016-00243

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 08/18/2016

5 CCR 1001-8

REGULATION NUMBER 6 STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

The above-referenced rules were submitted to this office on 08/19/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

September 06, 2016 10:54:21

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-10

Rule title

5 CCR 1001-10 REGULATION NUMBER 8 CONTROL OF HAZARDOUS AIR
POLLUTANTS 1 - eff 10/15/2016

Effective date

10/15/2016

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 8

Control of Hazardous Air Pollutants

5 CCR 1001-10

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

PART A Federal NESHAPs

I. Federal NESHAPs

The provisions of Part 61, Chapter I, Title 40, of the Code of Federal Regulations (CFR), promulgated by the U.S. Environmental Protection Agency listed in this section are hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the dates indicated and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys.

All new sources of air pollution and all modified or reconstructed sources of air pollution shall comply with the standards, criteria, and requirements set forth herein. For the purpose of this regulation "Administrator" shall mean both the Administrator of the Environmental Protection Agency or his/her authorized representative and the Colorado Air Pollution Control Division.

Subpart A General Provisions 40 C.F.R. Part 61 (July 1, 2015).

Subpart B Repealed – Reserved for National Emission Standards for Radon Emissions from Underground Uranium Mines 40 C.F.R. Part 61.

Subpart C National Emission Standard for Beryllium 40 C.F.R. Part 61 (July 1, 2015).

Subpart D National Emission Standard for Beryllium Rocket Motor Firing 40 C.F.R. Part 61 (July 1, 2015).

Subpart E National Emission Standard for Mercury 40 C.F.R. Part 61 (July 1, 2015).

Subpart F National Emission Standard for Vinyl Chloride 40 C.F.R. Part 61 (July 1, 2015).

Subpart H Repealed – Reserved for National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities 40 C.F.R. Part 61.

Subpart J National Emission Standard for Equipment leaks (fugitive Emission sources) of Benzene 40 C.F.R. Part 61 (July 1, 2015).

II. Reserved

III. Federal Maximum Achievable Control Technology

The regulations promulgated by the U. S. Environmental Protection Agency listed in this section are hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the dates indicated and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246, or may be examined at any state publications depository library. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission.

"Administrator" as used in the C. F. R. shall mean the Colorado Air Pollution Control Division.

Subpart F National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry, 40 C. F. R. Part 63, Subparts F (July 1, 2015).

Subpart G National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, 40 C. F. R. Part 63, Subparts G (July 1, 2015).

Subpart H National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, 40 C. F. R. Part 63, Subparts H (July 1, 2015).

Subpart I National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks, 40 C. F. R. Part 63, Subparts I (July 1, 2015).

Subpart J National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, 40 C.F.R. Part 63, Subpart J (July 1, 2015).

Subpart M National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 40 C. F. R. Part 63, Subpart M (July 1, 2015). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart M to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart N National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 C.F.R. Part 63, Subpart N (July 1, 2015). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart N to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart O National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Sterilization and Fumigation Operations, 40 C.F.R. Part 63, Subpart O (July 1, 2015). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart O to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart Q National Emissions Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers, 40 C.F.R. Part 63, Subpart Q (July 1, 2015).

- Subpart R National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations), 40 C.F.R. Part 63, Subpart R (July 1, 2015).
- Subpart S National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production, 40 C.F.R. Part 63, Subpart S (July 1, 2015).
- Subpart T National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning, 40 C.F.R. Part 63, Subpart T (July 1, 2015). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart T to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).
- Subpart U National Emission Standards for Hazardous Air Pollutants: Group 1 Polymers and Resins, 40 C.F.R. Part 63, Subpart U (July 1, 2015).
- Subpart W National Emissions Standards for Hazardous Air Pollutants: Epoxy Resins Production and Non-Nylon Polyamides Production, 40 C.F.R. Part 63, Subpart W (July 1, 2015).
- Subpart X National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting, 40 C.F.R. Part 63, Subpart X (July 1, 2015). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart X to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is deferred from submitting an application for such permit until December 9, 2005.
- Subpart AA National Emission Standards for Hazardous Air Pollutants for Source Category: Phosphoric Acid Manufacturing, 40 C.F.R. Part 63, Subpart AA (July 1, 2015), as amended August 19, 2015 (80 FR 50386).
- Subpart BB National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizers Production, 40 C.F.R. Part 63, Subpart BB (July 1, 2015), as amended August 19, 2015 (80 FR 50386).
- Subpart CC National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries, 40 C.F.R. Part 63, Subpart CC (July 1, 2015), as amended December 1, 2015 (40 FR 75178).
- Subpart DD National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations, 40 C.F.R. Part 63, Subpart DD (July 1, 2015).
- Subpart EE National Emission Standards for Hazardous Air Pollutants Final Standards for Hazardous Air Pollutant Emissions from Magnetic Tape Manufacturing Operations, 40 C.F.R. Part 63, Subpart EE (July 1, 2015).
- Subpart GG National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework Facilities, 40 C.F.R. Part 63, Subpart GG (July 1, 2015), as amended December 7, 2015 (80 FR 76152).
- Subpart HH National Emission Standards for Hazardous Air Pollutants for Source Category: Oil and Natural Gas Production and Natural Gas Transmission and Storage, 40 C.F.R. Part 63, Subparts HH (July 1, 2015).

- Subpart II National Emission Standards for Hazardous Air Pollutants: Shipbuilding and Ship Repair, 40 C.F.R. Part 63, Subpart II (July 1, 2015).
- Subpart JJ National Emission Standards for Hazardous Air Pollutants: Wood Furniture Manufacturing Operations, 40 C.F.R. Part 63, Subpart JJ (July 1, 2015).
- Subpart KK National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry, 40 C.F.R. Part 63, Subpart KK (July 1, 2015).
- Subpart LL National Emission Standards for Hazardous Air Pollutants for Source Category: Primary Aluminum Reduction Plants, 40 C.F.R. Part 63, Subpart LL (July 1, 2015), as amended October 15, 2015 (80 FR 62390).
- Subpart MM National Emission Standards for Hazardous Air Pollutants for Source Category: Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semi-chemical Pulp Mills, 40 C.F.R. Part 63, Subpart MM (July 1, 2015).
- Subpart OO National Emission Standards for Tanks - Level 1, 40 C.F.R., Part 63, Subpart OO (July 1, 2015).
- Subpart PP National Emission Standards for Containers, 40 C.F.R., Part 63, Subpart PP (July 1, 2015).
- Subpart XX National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, 40 C.F.R. Part 63, Subpart XX (July 1, 2015).
- Subpart YY National Emission Standards for Hazardous Air Pollutants for Source Category: Generic Maximum Achievable Control Technology Standard for Acetal Resins Production, Acrylic and Modacrylic Fiber Production, Hydrogen Fluoride Production, and Polycarbonate(s) Production, 40 C.F.R. Part 63, Subpart YY (July 1, 2015).
- Subpart CCC National Emission Standards for Hazardous Air Pollutants for Source Category: Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants, 40 C.F.R. Part 63, Subpart CCC (July 1, 2015).
- Subpart DDD National Emission Standards for Hazardous Air Pollutants for Source Category: Mineral Wool Production, 40 C.F.R. Part 63, Subpart DDD (July 1, 2015), as amended July 29, 2015 (80 FR 45280).
- Subpart EEE National Emission Standards for Hazardous Air Pollutants for Source Category: Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE (July 1, 2015).
- Subpart GGG National Emission Standards for Hazardous Air Pollutants for Source Category: Pharmaceuticals Production, 40 C.F.R. Part 63, Subpart GGG (July 1, 2015).
- Subpart HHH National Emission Standards for Hazardous Air Pollutants for Source Category: Oil and Natural Gas Production and Natural Gas Transmission and Storage, 40 C.F.R. Part 63, Subparts HHH (July 1, 2015).
- Subpart III National Emission Standards for Hazardous Air Pollutants for Source Category: Flexible Polyurethane Foam Production, 40 C.F.R. Part 63, Subpart III (July 1, 2015).
- Subpart JJJ National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins, 40 C.F.R. Part 63, Subpart JJJ (July 1, 2015).

Subpart LLL National Emission Standards for Hazardous Air Pollutants for Source Category: Portland Cement Manufacturing, 40 C.F.R. Part 63, Subpart LLL (July 1, 2015), as amended July 27, 2015 (80 FR 44772) and September 11, 2015 (80 FR 54728).

Subpart MMM National Emission Standards for Hazardous Air Pollutants for Source Category: Pesticide Active Ingredient Production, 40 C.F.R. Part 63, Subpart MMM (July 1, 2015).

Subpart NNN National Emission Standards for Hazardous Air Pollutants for Source Category: Wool Fiberglass Manufacturing, 40 C.F.R. Part 63, Subpart NNN (July 1, 2015), as amended July 29, 2015 (80 FR 45280).

Subpart OOO National Emission Standards for Hazardous Air Pollutants for Source Category: Amino/Phenolic Resins Production, 40 C.F.R. Part 63, Subpart OOO (July 1, 2015),.

Subpart PPP National Emission Standards for Hazardous Air Pollutants for Source Category: Polyether Polyols Production, 40 C.F.R. Part 63, Subpart PPP (July 1, 2015).

Subpart QQQ National Emission Standards for Hazardous Air Pollutants for Primary Copper, 40 C.F.R. Part 63, Subpart QQQ (July 1, 2015).

Subpart RRR National Emission Standards for Hazardous Air Pollutants for Source Category: Secondary Aluminum Production, 40 C.F.R. Part 63, Subpart RRR (July 1, 2007). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart RRR to obtain a Regulation No. 3., Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart TTT National Emission Standards for Hazardous Air Pollutants for Source Category: Primary Lead Smelting, 40 C.F.R. Part 63, Subpart TTT (July 1, 2015).

Subpart UUU National Emission Standards for Hazardous Air Pollutants for Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Plants at Petroleum Refineries, 40 C.F.R. Part 63, Subpart UUU (July 1, 2015), as amended December 1, 2015 (40 FR 75178).

Subpart VVV National Emission Standards for Hazardous Air Pollutants for Source Category: Publicly Owned Treatment Works, 40 C.F.R. Part 63, Subpart VVV (July 1, 2015).

Subpart XXX National Emission Standards for Hazardous Air Pollutants for Source Category: Ferroalloys Production: Ferromanganese and Silicomanganese, 40 C.F.R. Part 63, Subpart XXX (July 1, 2015).

Subpart AAAA National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills, 40 C.F.R. Part 63, Subpart AAAA (July 1, 2015).

Subpart CCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Manufacturing of Nutritional Yeast, 40 C.F.R. Part 63, Subpart CCCC (July 1, 2015).

Subpart DDDD National Emissions Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products, 40 C.F.R. Part 63, Subpart DDDD (July 1, 2015).

Subpart EEEE National Emissions Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), 40 C.F.R. Part 63, Subpart EEEE (July 1, 2015).

Subpart FFFF National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, 40 C.F.R. Part 63, Subpart FFFF (July 1, 2015).

Subpart GGGG National Emission Standards for Hazardous Air Pollutants for Source Category: Solvent Extraction for Vegetable Oil Production, 40 C.F.R. Part 63, Subpart GGGG (July 1, 2015).

Subpart HHHH National Emission Standards for Hazardous Air Pollutants for Wet Formed Fiberglass Mat Production, 40 C.F.R. Part 63, Subpart HHHH (July 1, 2015).

Subpart IIII National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, 40 C.F.R. Part 63, Subpart IIII (July 1, 2015).

Subpart JJJJ National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Coating, 40 C.F.R. Part 63, Subpart JJJJ (July 1, 2015).

Subpart KKKK National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans, 40 C.F.R. Part 63, Subpart KKKK (July 1, 2015).

Subpart MMMM National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products, 40 C.F.R. Part 63, Subpart MMMM (July 1, 2015).

Subpart NNNN National Emission Standards for Hazardous Air Pollutants for Large Appliance Manufacturing, 40 C.F.R. Part 63, Subpart NNNN (July 1, 2015).

Subpart OOOO National Emission Standards for Hazardous Air Pollutants for Printing, Coating, and Dyeing of Fabrics and Other Textiles, 40 C.F.R. Part 63, Subpart OOOO (July 1, 2015).

Subpart PPPP National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products, 40 C.F.R. Part 63, Subpart PPPP (July 1, 2015).

Subpart QQQQ National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products, 40 C.F.R. Part 63, Subpart QQQQ (July 1, 2015).

Subpart RRRR National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Furniture, 40 C.F.R. Part 63, Subpart RRRR (July 1, 2015).

Subpart SSSS National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Coil, 40 C.F.R. Part 63, Subpart SSSS (July 1, 2015).

Subpart TTTT National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations, 40 C.F.R. Part 63, Subpart TTTT (July 1, 2015).

Subpart UUUU National Emission Standards for Hazardous Air Pollutants for Cellulose Production Manufacturing, 40 C.F.R. Part 63, Subpart UUUU (July 1, 2015).

Subpart VVVV National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, 40 C.F.R. Part 63, Subpart VVVV (July 1, 2015).

Subpart WWWW National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production, 40 C.F.R. Part 63, Subpart WWWW (July 1, 2015).

Subpart XXXX National Emission Standards for Hazardous Air Pollutants for Tire Manufacturing, 40 C.F.R. Part 63, Subpart XXXX (July 1, 2015).

Subpart YYYY National Emissions Standards for Hazardous Air Pollutants for Stationary Combustion Turbines, 40 C.F.R. Part 63, Subpart YYYY (July 1, 2015).

Subpart ZZZZ National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, 40 C.F.R. Part 63, Subpart ZZZZ (July 1, 2007).

Subpart AAAAA National Emissions Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, 40 C.F.R. Part 63, Subpart AAAAA (July 1, 2015).

Subpart BBBB National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, 40 C.F.R. Part 63, Subpart BBBB (July 1, 2015).

Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, 40 C.F.R. Part 63, Subpart CCCCC (July 1, 2015).

Subpart DDDDD National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 40 C.F.R. Part 63, Subpart DDDDD (July 1, 2015), as amended November 20, 2015 (80 FR 72790).

Subpart EEEEE National Emissions Standards for Hazardous Air Pollutants for Iron and Steel Foundries, 40 C.F.R. Part 63, Subpart EEEEE (July 1, 2015).

Subpart FFFFF National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing, 40 C.F.R. Part 63, Subpart FFFFF (July 1, 2015).

Subpart GGGGG National Emission Standards for Hazardous Air Pollutants: Site Remediation, 40 C.F.R. Part 63, Subpart GGGGG (July 1, 2015).

Subpart HHHHH National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, 40 C.F.R. Part 63, Subpart HHHHH (July 1, 2015).

Subpart IIIII National Emissions Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 40 C.F.R. Part 63, Subpart IIIII (July 1, 2015).

Subpart JJJJJ National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Manufacturing, 40 C.F.R. Part 63, Subpart JJJJJ, as amended October 26, 2015 (80 FR 65740) and December 4, 2015 (80 FR 78517).

Subpart KKKKK National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, 40 C.F.R. Part 63, Subpart KKKKK, as amended October 26, 2015 (80 FR 65740) and December 4, 2015 (80 FR 78517).

Subpart LLLLL National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing, 40 C.F.R. Part 63, Subpart LLLLL (July 1, 2015).

Subpart MMMMM National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication, 40 C.F.R. Part 63, Subpart MMMMM (July 1, 2015).

Subpart NNNNN National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production, 40 C.F.R. Part 63, Subpart NNNNN (July 1, 2015).

Subpart P P P P P National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands, 40 C.F.R. Part 63, Subpart P P P P P (July 1, 2015).

Subpart Q Q Q Q Q National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities, 40 C.F.R. Part 63, Subpart Q Q Q Q Q (July 1, 2015).

Subpart R R R R R National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, 40 C.F.R. Part 63, Subpart R R R R R (July 1, 2015).

Subpart S S S S S National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing, 40 C.F.R. Part 63, Subpart S S S S S (July 1, 2015).

Subpart T T T T T National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining, 40 C.F.R. Part 63, Subpart T T T T T (July 1, 2015).

Subpart U U U U U National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, 40 C.F.R. Part 63, Subpart U U U U U (July 1, 2015), as amended April 6, 2016 (*81 FR 201723*).

(See Regulation Number 6, Part A, Subpart Da and Part B, Section VIII. for additional requirements regarding Electric Utility Steam Generating Units)

Subpart W W W W W National Emission Standards for Hospital Ethylene Oxide Sterilizers, 40 C.F.R. Part 63, Subpart W W W W W (July 1, 2015).

Subpart Y Y Y Y Y National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities, 40 C.F.R. Part 63, Subpart Y Y Y Y Y (July 1, 2015).

Subpart Z Z Z Z Z National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources, 40 C.F.R. Part 63, Subpart Z Z Z Z Z (July 1, 2015).

Subpart D D D D D National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources, 40 C.F.R. Part 63, Subpart D D D D D (July 1, 2015).

Subpart E E E E E National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources, 40 C.F.R. Part 63, Subpart E E E E E (July 1, 2015).

Subpart F F F F F National Emission Standards for Hazardous Air Pollutants: Secondary Copper Smelting, 40 C.F.R. Part 63, Subpart F F F F F (July 1, 2015).

Subpart G G G G G National Emission Standards for Hazardous Air Pollutants for Area Sources: Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium, 40 C.F.R. Part 63, Subpart G G G G G (July 1, 2015).

Subpart L L L L L National Emission Standards for Hazardous Air Pollutants for area sources: Acrylic and Modacrylic Fibers Production, 40 C.F.R. Part 63, Subpart L L L L L (July 1, 2015).

Subpart M M M M M National Emission Standards for Hazardous Air Pollutants for area sources: Carbon Black Production, 40 C.F.R. Part 63, Subpart M M M M M (July 1, 2015).

Sections 25-7-105(1)(b) and 25-7-109(2)(h) and 25-7-109(4), C.R.S. authorize the Commission to adopt emission control regulations and emission control regulations relating to hazardous air pollutants, respectively.

Purpose

Adoption of the federal rules and amendments to federal standards in 40 C.F.R. Part 63, Subparts AA, BB, CC, GG, LL, DDD, LLL, NNN, UUU, XXX, DDDDD, JJJJJ, KKKKK, UUUUU and EEEEEEE make these rules and revisions enforceable under Colorado law.

Further, these revisions may correct typographical, grammatical, and formatting errors throughout the regulation.

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Tracking number: 2016-00244

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 08/18/2016

5 CCR 1001-10

REGULATION NUMBER 8 CONTROL OF HAZARDOUS AIR POLLUTANTS

The above-referenced rules were submitted to this office on 08/19/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 06, 2016 10:54:31

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-15

Rule title

5 CCR 1001-15 REGULATION NUMBER 12 REDUCTION OF DIESEL VEHICLE
EMISSIONS 1 - eff 10/15/2016

Effective date

10/15/2016

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 12

Reduction of Diesel Vehicle Emissions

5 CCR 1001-15

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

Outline of Regulation

PART A	DIESEL FLEET SELF-CERTIFICATION PROGRAM
PART B	DIESEL OPACITY INSPECTION PROGRAM
PART C	STANDARDS FOR VISIBLE POLLUTANTS FROM DIESEL ENGINE POWERED VEHICLES (Operating on Roads, Streets and Highways)
PART D	STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

PART A DIESEL FLEET SELF-CERTIFICATION PROGRAM

I. General Provisions

I.A. Statement of Purpose

The purpose of Part A of this regulation is to reduce air pollution resulting from emissions from diesel-powered motor vehicles in the AIR Program area through opacity inspections or exemplary maintenance, by all diesel fleets registered, required to be registered or routinely operated in the program area or principally operated from a terminal, maintenance facility, branch, or division located within the program area as defined in 42-4-401 (8) C.R.S. with nine (9) or more vehicles over 14,000 pounds Gross Vehicle Weight Rating. Regulation Number 12 is a State-Only program and is not part of any state implementation plan with the US EPA.

I.B. Definitions

The following terms shall have the following meanings when used in this regulation:

- I.B.1. "Commission" means The Colorado Air Quality Control Commission
- I.B.2. "Compliance Plan" means a written plan of action completed by applicable diesel vehicle fleets conforming with the requirements of this regulation.
- I.B.3. "Certification of Emissions Control" (CEC), means the official certificate issued by a private (non-government) fleet opacity inspector to a fleet vehicle which has been inspected and tested according to the procedures in Part A, Section IV, and is in compliance with the opacity standards.

- I.B.4. "Diesel Fleet Self-Certification Program" (DFSCP) means the Opacity Inspection Program for Diesel Powered Fleet Vehicles Established by Section 42-4-414 C.R.S., as amended, and the Air Quality Control Commission, as AQCC Regulation Number 12, Part A.
- I.B.5. "Diesel Powered Motor Vehicle" or "Diesel Vehicle" as applicable to opacity inspections, includes only a motor vehicle with four wheels or more on the ground, powered by an internal combustion, compression ignition, diesel fueled engine, and also includes any motor vehicle having a personal property classification of A, B, or C, pursuant to Section 42-3-106, C.R.S., as specified on its vehicle registration, and for which registration in this state is required for operation on the public roads and highways. "Diesel Vehicle" does not include the following: vehicles registered pursuant to Section 42-12-304 (20), or 42-3-306 (4), C.R.S.: off-the-road powered vehicles or heavy construction equipment.
- I.B.6. "Division" means the Air Pollution Control Division of the Colorado Department of Public Health and Environment.
- I.B.7. "Excessive Violation" means non-compliance with the provisions of II.A.2.b., c., d., or i. of this Part A., or falsely making a certification that a vehicle is "physically based and principally operated outside the program area" pursuant to 42-4-414 (2.5) or the provisions of I.E. of this Part A.
- I.B.8. "Exemplary Maintenance" means an alternative method for fleet operators to demonstrate compliance with opacity standards on vehicles ten years old or newer by electronically submitting proof of periodic maintenance performed on vehicles, subject to the qualifying criteria and requirements for fleets and vehicles contained in this Part A.I.F and I.G. Exemplary maintenance is an optional alternative to opacity testing which may be chosen at the fleet's own discretion.
- I.B.9. "Fleet" means a diesel vehicle fleet consisting of nine (9) or more diesel vehicles of greater than 14,000 pounds Gross Vehicle Weight Rating, registered or required to be registered, or routinely operated in the program area or principally operated from a terminal, maintenance facility, branch, or division located within the program area.
- I.B.10. "GVWR" (gross vehicle weight rating) means the weight specified by the vehicle manufacturer as the maximum allowable loaded weight (vehicle empty weight plus the driver, passengers and payload) of a single vehicle.
- I.B.11. "Highest opacity reading" is that greatest stable opacity value for other than the snap/free acceleration procedures.
- I.B.12. "Opacity Compliance Coordinator" means designated person from each vehicle fleet to be the contact person between the fleet and the Division for carrying out this regulation.
- I.B.13. "Opacity Determination Certification" means a valid, non-expired, certification to be maintained by an opacity compliance coordinator and/or other fleet personnel charged with determining opacity levels. Opacity training and certification are to be conducted by the Division.
- I.B.14. "Opacity" means the degree to which an air pollutant obscures the view of an observer expressed in percentage of obscuration, or the degree, expressed in percent, to which transmittance of light is reduced by the air pollutant.
- I.B.15. "Opacity Inspection Form" (OIF) means the official form or electronic media issued by the Division to diesel self-certification fleets for recording opacity test results.

- I.B.16. "Opacity meter" means an optical instrument which is designed to measure the opacity of diesel exhaust. Opacity meters must meet the requirements of Part B II.C. of this Regulation. Opacity meters to be utilized for the SAE J1667 test procedures (Part A.V.C.5) must meet SAE J1667 specifications.
- I.B.17. "Physically Based" means the business location, including either the origination or destination of a vehicle, where a vehicle is maintained or legally parked when not in use on the road.
- I.B.18. "Principally Operated" means used to transport goods or passengers, or to operate mounted equipment within the program area for ninety or more cumulative days in a 12 month period.
- I.B.19. "Rated RPM" means a specific rpm which the manufacturer states that the engine's maximum/rated brake horsepower is attained. Rated horsepower and rpm information is usually found on a label affixed to the engine itself or other under-the-hood location.
- I.B.20. "Routinely Operated" means operated for 90 days or more in any 12 month period.
- I.B.21. "SAE J1667 specifications" and "SAE J1667 test procedures" mean the specifications and test procedures set out in *J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Motor Vehicles*, © 1996 Society of Automotive Engineers Inc. (SAE), which document is hereby incorporated into this regulation by reference. The incorporation of the *J1667 Recommended Practice* into this rule by reference does not include later amendments to or editions of the material. The *J1667 Recommended Practice* may be examined at any state publications depository library. To find out how to obtain a copy of the *J1667 Recommended Practices* contact Manager, Mobile Source Section, Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, or visit the Society of Automotive Engineers, Inc. website at www.sae.org.
- I.B.22. "Terminal, Division, or Maintenance Facility" means improved real property owned, leased or otherwise lawfully held by a controlling commercial interest by the fleet and meeting applicable local zoning requirements for commercial trucking, motor coach, or truck/coach maintenance operations.

I.B.23. "WOT" means wide open throttle.

I.C. Applicability

I.C.1. Geographic Area of Applicability

This regulation shall apply to the program areas as defined in Section 42-4-401 (8) C.R.S.

I.C.2. Vehicles eligible for diesel fleet self-certification program.

Heavy-duty diesel vehicles of greater than 14,000 pounds Gross Vehicle Weight Rating, identified as a fleet (nine (9) or more vehicles) and registered or required to be registered or routinely operated in the program area or principally operated from a terminal, maintenance facility, branch, or division located within the program area are required to participate in the diesel fleet self-certification program.

I.D. Opacity Compliance Test Cycle – New Vehicle Exemption

- I.D.1. Opacity compliance tests conducted on heavy-duty diesel vehicles equal to or less than ten model years old are valid for twenty-four months.
- I.D.2. Opacity compliance tests conducted on heavy-duty diesel vehicles that are more than ten model years old are valid for twelve months.
- I.D.3. Exemplary maintenance reports submitted as an alternative to opacity testing are valid for twelve months
- I.D.4. Any new heavy-duty diesel vehicle shall be exempt from testing until such vehicle has reached its fourth model year, or until the date of the transfer of ownership prior to the expiration of such exemption, if such transfer is within twelve months before such exemption ends.
- I.D.5 Any new heavy-duty diesel vehicle of model year 2014 or newer having a Gross Vehicle Weight Rating of twenty six thousand pounds or greater is exempt from testing until such vehicle has reached its sixth model year, or until the date of the transfer of ownership prior to the expiration of such exemption, if such transfer is within twelve months before such exemption ends.

I.E. Opacity Testing Exemption for Vehicles Certified as Physically Based and Principally Operated Outside the Program Area

Heavy-duty diesel vehicles of greater than 14,000 pounds gross vehicle weight rating, owned by a fleet subject to the provisions of I.C.1. and 2. of this Part A and registered or required to be registered in the program area that are certified by the fleet owner to be physically based and principally operated from a terminal, division, or maintenance facility outside the program area, are exempt from the opacity testing requirements of this Part A. This exemption is valid for a period of 12 months from the date the certification is approved by the executive director of the department of revenue and may be renewed annually.

A vehicle exempted from opacity testing requirements that later becomes physically based and principally operated within the program area must be opacity tested within 90 days of the date its exemption expires, or within ninety days of a change to the location at which the vehicle is physically based, whichever is earlier.

I.F. Exemplary Maintenance - Fleet Enrollment Qualifying Criteria

A fleet may submit an exemplary maintenance report as an alternative to an opacity inspection for individual vehicles. In order to qualify for the exemplary maintenance alternative, a fleet must meet the following requirements:

- I.F.1. Maintain their vehicles to manufacturer's specified maintenance procedures and intervals at a minimum.
- I.F.2. Utilize a computer based, commercially available electronic maintenance management program to schedule, track and report on maintenance performed on vehicles owned/controlled by the fleet.
- I.F.3. Provide an electronic exemplary maintenance report for each exemplary maintenance eligible vehicle in a format prescribed by the Air Pollution Control Division (Division) on a reporting schedule as prescribed in this Part A I.D.3.
- I.F.4. Maintain maintenance compliance timeliness rating with their own maintenance plan as submitted.

- I.F.5. Have maintained a standing in good status with the Diesel Fleet Self Certification Program for the past three calendar years.
- I.F.6. Submit a Division approved exemplary maintenance Compliance Plan each year, as part of the annual Compliance Plan submittal pursuant to II.A.2.

I.G. Exemplary Maintenance -Vehicle Qualifying Criteria

For individual vehicles that will utilize the exemplary maintenance alternative to opacity testing, the following qualifying criteria apply:

- I.G.1. The vehicle must be owned/controlled by a fleet that qualifies to perform, and is enrolled in Exemplary Maintenance, pursuant to Part A I.F
- I.G.2. The vehicle must be no more than ten model years old
- I.G.3. The vehicle is to be maintained to manufacturer's specified maintenance procedures and intervals, at a minimum
- I.G.4. The exemplary maintenance status must be reported to the Division in an Electronic Maintenance Report in a format approved by the Division, annually pursuant to Part A II.A.2.i.

II. Requirements to File Compliance Plan

II.A. Compliance Plan Requirements and Contents

- II.A.1. Every fleet shall prepare, adopt, and submit to the Division within the time period hereinafter provided a complete Compliance Plan form signed by an authorized agent and containing a commitment to implement and maintain a program which meets the requirements of this regulation.

Each participating fleet shall provide the Division with an updated/revised compliance plan and fleet vehicle inventory on an annual basis. Such plan and fleet vehicle inventory shall be submitted to the Division by December 31 of each year, to be effective for the following calendar year. Should fleet size, location, ownership, or compliance coordinator change, the Division shall be notified within thirty (30) days of a change.

- II.A.2. Each Compliance Plan shall set forth with reasonable detail a plan which shall include provisions for at least the following:
 - II.A.2.a. Dissemination of written information to all employees who maintain and/or operate diesel vehicles subject to these regulations, regarding Colorado opacity laws, penalties for non-compliance, and health and environmental impacts of diesel emissions, as provided by the Division.
 - II.A.2.b. Establishment of test procedures to be used for determining and certifying compliance with State opacity standards as given in Section VII of this Part A of this regulation.
 - II.A.2.c. Establishment of maintenance practices and schedules to be followed for maintaining low-smoke levels. Maintenance schedules at a minimum will follow manufacturer's recommended procedures and intervals.

- II.A.2.d. Performance of biennial opacity compliance tests for vehicles ten years old and newer, and annual opacity compliance tests for vehicles greater than ten years old, as described in Section IV of this Part A of this regulation prior to the vehicle's annual registration on each vehicle subject to these regulations, repair of any vehicle found to be exceeding the State opacity standard (found in Section VII of Part A of this regulation) and bring it into compliance with State opacity standards before being returned to service, maintaining records of such testing, including the opacity inspection form and any other forms provided by the Division and submit the white copies of the opacity inspection form to the Division annually by December 31, of each year. Subsequent year forms and documents may not be dispensed to fleets which fail to submit the prior year opacity inspection forms to the Division as required.
- II.A.2.e. Establishment of an Opacity Compliance Coordinator from each fleet to oversee the carrying out of this regulation.
- II.A.2.f. Determination of vehicle smoke opacity by a fleet compliance coordinator and/or other trained observer employed by the fleet having possession of a valid, non-expired, opacity determination certificate issued by the Division. Such persons shall determine vehicle smoke opacity levels by either the visual method or by use of a continuous-reading, light extinction opacity meter with peak hold feature or interfaced chart recorder. Such test shall use an opacity meter for vehicles that are greater than ten model years old.
- II.A.2.g. Participating fleets shall electronically submit a fleet vehicle information inventory in a format prescribed by the Division, including but not necessarily limited to make, VIN, unit ID, and license plate type, number and state.
- II.A.2.h. Notwithstanding the provisions of Part A, Section II.A.2.D., new Heavy-duty diesel vehicles having a GVWR of less than twenty six thousand pounds shall be issued a certification of emissions compliance without inspection or testing. Such certificate shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year or on the date of the transfer of ownership if such date is within twelve months before such certificate would expire, pursuant to Section I.D.4., or unless such transfer of ownership is a transfer from the lessor to the lessee. Prior to the expiration of such certification, such vehicle shall be inspected pursuant to Section IV of this Part A. New Heavy-duty diesel vehicles having a GVWR greater than 26,000 pounds shall be issued a certification of emissions compliance without inspection or testing. Such certificate shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its sixth model year or on the date of the transfer of ownership if such date is within twelve months before such certificate would expire, pursuant to Section I.D.5., or unless such transfer of ownership is a transfer from the lesser to the lessee. Prior to the expiration of such certification, such vehicle shall be inspected pursuant to Section IV of this Part A.
- II.A.2.i. A fleet qualifying to utilize the exemplary maintenance alternative must electronically submit an Exemplary Maintenance Plan, as part of the Compliance Plan, for those eligible vehicles that will not be opacity tested. The Exemplary Maintenance Plan must contain vehicle maintenance profiles and a commitment by the fleet to adhere to those maintenance profiles. Maintenance profiles are to be based on the fleet's determination of maintenance needs for their own vehicles, but must be no less stringent than those prescribed by the engine manufacturer for that engine in that application. The Exemplary Maintenance

Plan must contain other vehicle specific information as prescribed by the Division.

II.B. Additional requirement

Each Opacity Compliance Coordinator shall provide to all new employees or newly reassigned employees who work in the maintenance or operation of diesel vehicles, the most current information regarding this regulation and the Fleet's Compliance Plan within thirty (30) days of the employees commencing work. Each Opacity Compliance Coordinator shall provide updated information to all employees regarding this regulation within thirty (30) days of any substantial change to this regulation and/or the Fleet's Compliance Plan.

III. Compliance Plan Filing – Time, Approval

III.A. Filing of Plans

Fleets which meet the applicability criteria of this Regulation Number 12 are required to participate in the DFSCP of this Regulation Number 12, and such fleets bear the responsibility of contacting and notifying the Division of their fleet status and intent to participate in the DFSCP. Affected fleets shall complete and submit a compliance plan and a vehicle inventory to the Division for approval within 30 days of initial contact with the Division.

III.B. Approval and Disapproval

The Division shall review and evaluate each Compliance Plan (and exemplary maintenance plan, if submitted) filed with it within thirty (30) days of its receipt by the Division. Upon approval of a Compliance Plan (and exemplary maintenance plan, if submitted), the Division shall return a copy of the plan marked "approved" to the Fleet who shall post the plan in a conspicuous place in the Business location. If a Compliance Plan (or exemplary maintenance plan, if submitted) as filed is disapproved by the Division, the Division shall issue a letter of disapproval, and the Fleet shall have thirty (30) days within which to revise the plan and resubmit it to the Division. The Division shall have thirty (30) days to approve or disapprove the resubmitted plan.

III.C. Heavy-duty diesel-fueled motor vehicles owned by the United States government, State of Colorado, and local governments within the AIR Program area, subject to the provisions of Part A of this regulation (Diesel Fleet Self-Certification Program), shall be inspected once every other year, (for vehicles ten years old, and newer), or every year (for vehicles greater than ten years old), and shall comply with the inspection provisions and obtain a Certification of Emissions Control. Inspection results will be reported to the Department of Revenue by submission of the Certification of Emissions Control not later than December 31, of each year.

IV. Heavy-duty Diesel Vehicle Self-Certification Opacity Test Procedures

IV.A. Opacity Evaluation Methods

Fleets shall utilize one of the following two methods of evaluating smoke opacity.

IV.A.1. A visual evaluation by means of a smoke observer trained and certified by the Colorado Department of Health. The observer is to be positioned in a location perpendicular to the exhaust plume and at a distance which will provide a clear view of the exhaust plume. Visual observation shall not be used on vehicle that is older than ten model years.

IV.A.2. Opacity meter evaluation of the exhaust stream by means of a portable light extinction opacity meter as specified in Part B, Section II.C.1. of this regulation. The meter is to be attached to the exhaust piping and calibrated as specified by the manufacturer. Opacity

meters to be utilized for the Snap acceleration J1667 test procedures (Part A.IV.C.5.) must meet SAE J1667 specifications.

IV. B. Test Site and Vehicle Parameters

- IV.B.1. On-Road test procedures will require a testing site approximately 300 yards in length that is suitable for vehicle full-power runs to be conducted in complete safety.
- IV.B.2. An ambient temperature of 35°F (1.7°C) or above is required during any given vehicle test.
- IV.B.3. Vehicles scheduled for opacity testing shall be in safe operating condition.
- IV.B.4. Vehicles shall be at normal operating temperatures.
- IV.B.5. If the vehicle to be tested is equipped with multiple exhaust outlets and if it is determined that they emit different exhaust smoke levels, the outlet emitting the heavier smoke level shall be opacity evaluated.
- IV.B.6. Vehicles undergoing opacity testing are to use fuel obtained from the fleet's normal fuel supply. No special fuels, fuel additives, or devices are to be utilized for the sole purpose of obtaining opacity readings during testing that are lower than those typically observed when the vehicle is operating on the fleet's usual fuel supply.

IV.C. Self-Certification Program Opacity Test Procedures

Fleets shall inspect their vehicles for compliance with opacity standards as defined in Part A, Section VII by utilizing one of the following test procedures, 1 through 5. Fleets that utilize the SAE J1667 test procedures shall use such procedures on all its vehicles.

IV.C.1. On- Road acceleration Test Procedure

IV.C.1.a. Select a gear which will permit the vehicle to accelerate under wide open throttle (WOT) from a moving position (approximately 900 to 1000 engine rpm) up to maximum engine rpm in no less than seven (7) seconds. This step is vital in order to ensure that the engine will be operated in an rpm range and timeframe which will allow sufficient time and engine loading in order to accurately monitor the vehicle's smoke opacity levels. Bring vehicle to a stop.

IV.C.1.b. If an opacity meter is being utilized, shutdown the engine and verify the zero setting of the opacity meter. Clean the monitoring unit as necessary.

IV.C.1.c. Restart engine and with the transmission in the selected gear as described in step a, accelerate the vehicle under WOT from a road speed equivalent of 900 to 1000 engine rpm up to maximum engine rpm.

If a visual opacity observation is being used, alert the certified observer by means of a horn or other communication that the test is completed and to record on the opacity inspection worksheet the highest opacity which was observed in an engine rpm range which encompasses 70% of rated rpm up to maximum governed rpm. If an opacity meter was utilized, note and record the highest opacity reading displayed during the aforementioned rpm range.

IV.C.1.d. Bring the vehicle to a safe controlled stop and shutdown the engine. Examine opacity meter reading, if applicable, and if there is more than a five

percent (5%) shift (deviation) in the zero position and the highest opacity reading observed during the test exceeds the standard as defined in Part A, VII, clean the meter lenses, zero the meter and repeat the procedure beginning at step c.

IV.C.1.e.If the highest opacity observed during Step c exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.1.f.If neither the highest opacity observed during step c nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.1.g. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

IV.C.2. On-Road Brake Lug-Down Test Procedure

IV.C.2.a. Select a gear which will permit the vehicle to attain a road speed of 15 to 25 mph with the engine at maximum rpm, wide open throttle (WOT). Due to the many variables, this gear selection is basically a trial and error effort. Upon completing the gear selection, bring vehicle to a stop.

IV.C.2.b. If an opacity meter is being utilized, shutdown the engine and verify the zero setting of the opacity meter. Clean the monitoring unit as necessary.

IV.C.2.c. Restart engine and with the vehicle operating at WOT in the selected gear as described in Step a, maintain WOT and slowly begin loading the engine by means of the vehicle's service brakes. The loading is to be applied linearly throughout an engine rpm range which extends from maximum engine rpm down to seventy percent (70%) of the engine's rated rpm in a time span which encompasses no less than seven (7) seconds.

IV.C.2.d. Momentarily maintain the seventy percent (70%) rated rpm/WOT relationship and if a visual opacity observation is being used, alert the certified observer by means of a horn or other communication that the test is completed and to record on the opacity inspection worksheet the highest opacity which was observed during the brake lugdown procedure.

If an opacity meter was utilized, note and record the highest opacity reading displayed during the brake lugdown procedure.

IV.C.2.e. Bring the vehicle to a safe controlled stop and shutdown the engine. Examine opacity meter reading, if applicable, and if there is more than a five percent (5%) shift (deviation) in the zero position, and the highest opacity reading observed during the test exceeds the standard as defined in Part A, VII, clean the meter lenses, zero the meter, and repeat the procedure beginning at Step c.

IV.C.2.f.If the highest opacity observed during Step c exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.2.g.If neither the highest opacity observed during Step c nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.2.h.The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

IV.C.3. Stall Test Procedure (Vehicles with Automatic Transmissions)

This is a full-load stationary test designed for vehicles equipped with automatic transmissions.

IV.C.3.a. Transmission/torque converter oil is to be at normal operating temperature (160 to 200° F).

IV.C.3.b. If an opacity meter is being utilized, verify the zero setting of the opacity meter. Clean the monitoring unit if necessary.

IV.C.3.c. Start engine and operate at idle rpm. Apply vehicle's parking brake and securely block the vehicle. Apply the service brakes and shift the transmission gear selector to a forward range.

IV.C.3.d. Accelerate the engine by means of wide open throttle (WOT) until the transmission's stall speed rpm is attained. Maintain stall speed rpm for approximately five seconds in order to allow for stabilization.

IV.C.3.e. Momentarily maintain stall speed rpm and if a visual opacity observation is being used, alert the certified observer by means of a horn or other communication that the test is completed and to record on the opacity inspection worksheet the opacity attained at this time (stall speed rpm).

If an opacity meter is utilized, note and record the opacity meter reading at this time (stall speed rpm).

IV.C.3.f. Return the engine to idle rpm and shut down the engine.

Examine opacity meter reading, if applicable, and if there is more than a five percent (5%) shift (deviation) in the zero position, and the highest opacity reading observed during the test exceeds the standard as stated in Part A, VII, clean the meter lenses, zero the meter and repeat the procedure beginning at Step c.

Allow approximately two minutes of neutral operation between stall tests in order to prevent overheating of the transmission. During the two-minute period, maintain 1000 to 1400 engine rpm.

IV.C.3.g. If the highest opacity observed during Step e exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.3.h. If neither the highest opacity observed during Step e nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.3.i. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

IV.C.4. Dynamometer Test Procedure

IV.C.4.a. If a smoke opacity meter is being used, verify the meter is set at zero. Start engine and with the dynamometer in an unloaded mode/condition, select a gear which will allow the vehicle to attain and maintain a no-load vehicle speed of 60 to 70 miles per hour (mph) at wide open throttle (WOT). It is preferred and recommended that vehicles be operated at the lower end of this mph range whenever possible. If vehicle has a maximum road speed that is less than 60 mph, operate vehicle at the highest mph possible. Upon stabilization, maintain speed for ten (plus or minus four) seconds and record engine rpm and mph on opacity worksheet.

IV.C.4.b. While maintaining full throttle (WOT), slowly increase the dynamometer loading until engine rated rpm (plus or minus 15 rpm) is obtained. Maintain this speed/load for ten (plus or minus four) seconds and record data on opacity worksheet; engine rpm, smoke opacity, and horsepower (hp).

IV.C.4.c. Maintain full throttle (WOT) and slowly increase dynamometer loading until engine is at 90 percent of rated rpm (plus or minus 15 rpm). Maintain this speed/load for ten (plus or minus four) seconds and record data on opacity worksheet; engine rpm, smoke opacity, and hp.

IV.C.4.d. Maintain full throttle (WOT) and slowly increase dynamometer loading until engine is at 80 percent of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten (plus or minus four) seconds and record data on opacity worksheet; engine rpm, smoke opacity, and hp.

IV.C.4.e. Maintain full throttle (WOT) and slowly increase dynamometer loading until engine is at 70 percent of rated rpm (plus or minus 15 rpm). Maintain this speed/load for ten (plus or minus four) seconds and record data on opacity worksheet; engine rpm, smoke opacity, and hp. This step concludes the engine loading procedure; do not apply additional loading under any circumstances.

IV.C.4.f. Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the dynamometer lugdown test. If a downshift occurs, continue with the test.

IV.C.4.g. Remove dynamometer loading and shutdown engine after observing engine cool down procedure.

IV.C.4.h. Examine opacity meter reading, if applicable, and if there is more than a five percent (5%) shift (deviation) in the zero position and the highest opacity reading observed during the test exceeds the standard as defined in Part A, VIII, clean the meter lenses, zero the meter and repeat the procedure beginning at Step a.

IV.C.4.i. If the highest opacity observed during Steps b through e exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%) the vehicle fails the inspection.

IV.C.4.j. If neither the highest opacity observed during Step b through e nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.4.k. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

IV.C.5. SAE J1667 Test Procedures.

If the SAE J1667 test procedures are used, the inspector shall comply with the procedures and specifications set out in SAE J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Motor Vehicles, © 1996 Society of Automotive Engineers Inc. (SAE), which document is incorporated herein by reference as provided in Section I.B.18.

The opacity inspector shall then record the average opacity reading, the pass/fail determination and sign the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

IV.D. Optional No-Load Opacity Test (the opacity results of these tests (Section IV.D.1 and IV.D.2) are for data collection and engine diagnosis information only and will not be used in determining a vehicle's compliance with Regulation 12, Part A, VII, opacity standards).

IV.D.1. High Idle Opacity Test Procedure

IV.D.1.a. If an opacity meter is being utilized, verify the zero setting of the meter. Start engine and operate at idle rpm.

IV.D.1.b. With the transmission in neutral, slowly increase the engine speed to high idle (maximum governed no-load rpm) and allow engine rpm to stabilize.

IV.D.1.c. Momentarily maintain high idle rpm and if a visual observation is being used, alert the certified observer by means of a horn or other communication that the test procedure has reached completion and the observer is to record on the opacity inspection worksheet the opacity observed at this time (high idle rpm).

If an opacity meter is utilized, note and record the meter reading/value at this time (high idle rpm).

IV.D.1.d. Return the engine to idle rpm and shutdown the engine. Enter the highest opacity reading observed and record in step (1.c.) on the self-certification opacity inspection form.

IV.D.2. Snap/Free Acceleration Test Procedure. This procedure requires a rapid wide open throttle (WOT) no-load acceleration of the engine from low idle rpm to maximum governed no-load engine rpm with the transmission in neutral.

IV.D.2.a. If an opacity meter is being utilized, verify the zero setting of the meter. Start engine and operate at idle rpm.

- IV.D.2.b. With the transmission in neutral and the engine at idle rpm, slowly accelerate the engine, allowing the engine to reach its maximum stabilized, no-load governed speed/rpm. Allow the engine to return to idle.
- IV.D.2.c. If an opacity meter is being utilized, place the meter in "Peak Hold" position. If a visual observation is being used, the certified observer shall note and record the highest opacity observed during the following (Step 2.d) rapid acceleration procedure.
- IV.D.2.d. Perform the acceleration procedure as described in step (2.b) but accelerate the engine as rapidly as possible. Allow engine to return to idle and shut down engine.
- IV.D.2.e. Enter on the opacity inspection form the highest opacity observed and recorded by the certified observer or captured by the opacity meter's peak hold feature, whichever is applicable.

V. Determination of Compliance

V.A. On-Site Fleet Inspection

The Division shall have the authority to determine a Fleet's compliance with this regulation or the Fleet's Compliance Plan (or exemplary maintenance plan, if submitted) by personal inspection of a Fleet's Business Location. The Division shall notify each inspected fleet of any violations of this regulation or the Fleet's Compliance Plan (or exemplary maintenance plan, if submitted) immediately upon completion of the inspections and shall be supplied with a written report of the results of the inspection within thirty (30) days of the inspection date. Such inspections by the Division may not be made more frequently than twice in any twelve (12) month period unless complaints of violation of this regulation have been received by the Division or the Division otherwise has cause to believe that the Fleet is not in compliance with the requirements of this regulation or the Fleet's Compliance Plan (or exemplary maintenance plan, if submitted). Such inspections may be made by the Division only during the normal working hours of a Fleet. The time of inspection will be determined by the Division, but must be at times reasonably convenient to the fleet. Individual vehicles of the fleet requested by the Division should be available at the time of inspection, as reasonably convenient to the fleet operators, with advance notice by the Division of such inspection.

V.B. Record Keeping Requirements

Opacity test results from the annual inspections shall be kept by the Fleets and shall be available to the Division at inspections as described in Section V.A. Copies of test data shall be submitted to the Division annually by December 31 of each year. Fleets which fail to submit the test data to the Division as required may not be dispensed forms and documents for the following year. Standardized test forms shall be developed and provided by the Division.

- V.B.1. Exemplary maintenance annual Electronic Maintenance Reports shall be kept by the fleets and shall be available to the Division at inspections as described in section V.A. Copies of Electronic Maintenance Reports shall be submitted to the Division by December 31 of each year. Exemplary maintenance fleets which fail to submit Electronic Maintenance Reports, or fail to submit Electronic Maintenance Reports that demonstrate compliance with the elements of that fleet's exemplary maintenance plan as required, may be denied the opportunity to participate in the exemplary maintenance alternative for up to three years, at the discretion of the Division Director.

V.C. Testing Exemption Certification Records

Certification made by the fleet owner and approved by the Executive Director of the Department of Revenue that a vehicle is physically based and principally operated from a terminal, division, or maintenance facility outside the program area as described in I.E. shall be kept by the Fleet Compliance Coordinator and shall be made immediately available to the Division at inspections as described in V.A.

VI. Penalties for Non-Compliance

- VI.A. Excessive violations, two or more within a 12 month period, as defined in Part A, Section I.B.7 of this regulation shall result in the fleet being removed from the self-certification program (Regulation 12, Part A) and being placed under the diesel opacity inspection program (Regulation 12, Part B) for a minimum of one year (twelve months).
- VI.B. Exemplary maintenance fleets may be discontinued from enrollment for excessive violations. Exemplary maintenance fleets which fail to submit Electronic Maintenance Reports, or fail to submit Electronic Maintenance Reports that demonstrate compliance with the elements of that fleet's Exemplary Maintenance Plan as required, or that falsify maintenance records or Electronic Maintenance Reports, may be discontinued from enrollment in the exemplary maintenance program.
- VI.C. Excessive violators shall be reported to the Executive Director of the Department of Revenue for enforcement action at the Executive Director's discretion and authority, which may include a hold to be placed on the violating vehicle's registration. Demonstration of compliance shall be made by the fleet to the Division. The Division shall report to the executive director of the Department of Revenue that compliance has been demonstrated.

VII. Opacity Standards for Diesel-Powered Motor Vehicles Subject to Part A of This Regulation.

Subject to the provisions of Section 42-4-413, C.R.S., as amended, and Section 42-4-414, C.R.S., as amended vehicles inspected following the procedures established in the Part A of this regulation shall meet the following opacity standards. The smoke opacity standard for all diesel vehicles subject to loaded mode opacity test, under Part A IV.C.1 through IV.C.4 of this regulation shall be thirty-five percent (35%) and twenty percent (20%) for naturally aspirated and turbocharged diesel vehicles respectively for five (5) seconds. The smoke opacity standard for all diesel vehicles of model year 1991 and newer subject to snap acceleration J1667 opacity tests, under Part A IV.C.5 of this regulation shall be 40% opacity. The smoke opacity standard for all diesel vehicles of model year 1990 and older subject to snap acceleration J1667 opacity tests, under Part A IV.C.5 of this regulation shall be 55% opacity.

PART B DIESEL OPACITY INSPECTION PROGRAM

I. General Provisions

I.A. Statement of Purpose

The purpose of PART B of this regulation is to reduce air pollution resulting from emissions from diesel powered motor vehicles, as defined in Part B of this regulation, registered or required to be registered, routinely operated in the program area, or principally operated from a terminal, maintenance facility, branch, or division located within the AIR Program area, and not subject to Part A of this regulation.

I.B. Definitions

- I.B.1. "AIR Account" is a special fund set aside in the Highway Users Tax Fund for the operation of the "AIR Program" and the "Diesel Opacity Inspection Program".

- I.B.2. "Air Environmental Systems Technician" mean those persons employed by the Department of Revenue for licensing and enforcement of the AIR Program and the Diesel Opacity Inspection Program.
- I.B.3. "AIR Program" is the Automobile Inspection and Readjustment (AIR) Program established pursuant to Sections 42-4-301 to 42-4-316.5 C.R.S. as amended.
- I.B.4. "AQCC" means Air Quality Control Commission.
- I.B.5. "Basic Engine Systems" are those parts or assemblies which provide for the efficient conversion of diesel fuel into useful power to include, but not limited to valve train mechanisms, cylinder heads, block, piston-ring-cylinder sealing integrity and post-combustion emissions control devices.
- I.B.6. "Certificate of Qualification" means official certificate issued by the Division to candidates who have successfully passed the qualification test, required in order to become licensed as a diesel opacity inspector in the Diesel Opacity Inspection Program.
- I.B.7. "Certification of Diesel Smoke Opacity Compliance" is the document which indicates that the smoke emissions from the vehicle comply with applicable smoke opacity limits and the emissions control systems are installed, intact and apparently operational at the time of inspection or after needed adjustments or repairs and re-inspection.
- I.B.8. "Certification of Diesel Smoke Opacity Waiver" is the document issued by the Department of Revenue, which indicates that the smoke emissions from the vehicle do not comply with the applicable smoke opacity limits after inspection, adjustment and smoke-related repairs.
- I.B.9. "Certification" or "Certification of Emissions Control" means either a "Certification of Diesel Smoke Opacity Compliance" or "Certification of Diesel Smoke Opacity Waiver" issued to the owner of a diesel vehicle which is subject to the diesel emissions inspection program in order to indicate the status of inspection requirement compliance of such a vehicle.
- I.B.10. "Certification of Emissions Exemption" means the official document issued by the Department of Revenue, in lieu of the Certification of Emissions Control.
- I.B.11. "Certified Neutral Density Filter" means an optical quality filter which reduces the amount of transmitted light, an amount which is dependent upon the filter's optical density rating, uniformly across the visible light spectrum for the purpose of verifying the accuracy of the opacity meters.
- I.B.12. "Certified Thermometer" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F and an attested accuracy of at least plus or minus 1°F with increments of 1°, with protective shielding, and approved by the Department.
- I.B.13. "Chassis Dynamometer" means a vehicle power absorption device which has the ability to approximate or simulate actual on-road operation of motor vehicles through the application of variable loading.
- I.B.14. "Commission" means Colorado Air Quality Control Commission.
- I.B.15. "Department" means Department of Revenue.

- I.B.16. "Diesel Opacity Inspection" means an inspection of a diesel powered vehicle performed by a licensed inspector, employed by a licensed station, pursuant to 42-4-406 C.R.S., using the procedures and provisions set forth in Part B of AQCC Regulation Number 12 and Department rules.
- I.B.17. "Diesel Opacity Inspection Program" means the opacity inspection program for diesel powered vehicles established by 42-4-401 to 42-4-412 C.R.S., as amended and Regulation Number 12, Part B.
- I.B.18. "Diesel Opacity Inspection Program Station" is a station that qualifies and is licensed to operate as an emissions inspection station for light or heavy-duty diesel vehicles, or both in accordance with requirements set forth in 42-4-407 C.R.S., as amended, AQCC Regulation Number 12, Part B, and Department Rules required under 42-4-405 C.R.S.
- I.B.19. "Diesel Opacity Inspector" means an individual licensed to perform opacity inspections on vehicles required under 42-4-406 C.R.S. who is employed at a licensed diesel opacity inspection station and is qualified in accordance with AQCC Regulation Number 12, Part B and the Department of Revenue.
- I.B.20. "Diesel Powered Motor Vehicle" or "Diesel Vehicle" as applicable to opacity inspections, includes only a motor vehicle with four wheels or more on the ground, powered by an internal combustion, compression ignition, diesel fueled engine, and also includes any motor vehicle having a personal property classification of A, B, or C pursuant to Section 42-3-106, C.R.S., as specified on its vehicle registration, and for which registration in this state is required for operation on the public roads and highways. "Diesel Vehicle" does not include the following: vehicles registered pursuant to Section 42-12-301, or 42-3-306 (4) C.R.S.: off-the-road diesel powered vehicles or heavy construction equipment.
- I.B.21. "Diesel Vehicle Inspection Report (DVIR)" means an official form and media issued by the Colorado Department of Revenue to licensed diesel opacity inspection stations, which contains Certification of Emissions Control record information.
- I.B.22. "Division" is the Air Pollution Control Division of the Colorado Department of Public Health and Environment.
- I.B.23. "Emissions Control Systems" are those parts, assemblies or systems originally installed by the manufacturer in or on a vehicle for the specific purpose of reducing emissions.
- I.B.24. "Engine Rated RPM" means a specific rpm at which the manufacturer states that the engine's maximum/rated brake horsepower is attained. Above this rpm, the engine's governor will typically begin limiting full load fuel quantity and thus prevent the engine from developing full power beyond this rpm. Rated engine power and speed information is usually found on a label affixed to the engine itself or other under-the-hood location.
- I.B.25. "Exhaust Aftertreatment" means any post combustion emissions control system that reduces emissions by chemical, catalytic, or mechanical action, and may include diesel oxidation catalysts, diesel particulate filters, lean NOx traps, selective catalytic reduction, or other technologies. Exhaust aftertreatment also includes the piping, wiring, sensors, diesel emissions fluid, control systems, and software as installed by the vehicle/engine manufacturer.
- I.B.26. "GVWR" (gross vehicle weight rating) means the weight specified by the vehicle manufacturer as the maximum allowable loaded weight (vehicle empty weight plus the driver, passengers and payload) of a single vehicle.

- I.B.27. "Heavy-duty Diesel Vehicle" as applicable to the Diesel Opacity Inspection Program refers to diesel vehicles of greater than 14,000 pounds GVWR.
- I.B.28. "Heavy-duty Diesel Opacity Inspection Station" means a facility licensed to inspect heavy-duty diesel vehicles only.
- I.B.29. "Heavy-duty Dynamometer" means a chassis dynamometer meeting the requirements for accurately and safely testing heavy-duty vehicles.
- I.B.30. "Highest Opacity Reading" is that greatest stable opacity value for other than the snap/free acceleration procedure.
- I.B.31. "ISO" means International Standards Organization.
- I.B.32. "Light-duty Diesel Opacity Inspection Station" means a facility licensed to inspect light-duty diesel vehicles only (14,000 pounds GVWR and less).
- I.B.33. "Light-duty Diesel Vehicle" as applicable to the Diesel Opacity Inspection Program refers to diesel vehicles of 14,000 pounds and less GVWR/
- I.B.34. "Light-duty Dynamometer" means a chassis dynamometer meeting the requirements for testing light-duty vehicles. These dynamometers may have a limited heavy-duty capability.
- I.B.35. "Maximum No-Load RPM or HIGH Idle RPM" means the maximum rpm that the engine's governor will allow the engine to attain under no-load, wide open throttle (WOT) conditions.
- I.B.36. "MPH" means miles per hour.
- I.B.37. "On-Road Test Procedures" means the heavy-duty diesel test procedures described in Part B, Section III.D. of this regulation.
- I.B.38. "Opacity" means the degree to which an air pollutant obscures the view of an observer expressed in percentage of obscuration, or the degree, expressed in percent, to which transmittance of light is reduced by the air pollutant.
- I.B.39. "Opacity Meter" means an optical instrument which is designed to measure the opacity of diesel exhaust.
- I.B.40. "Opacity Meter Calibration Form" means the official electronic record for recording weekly opacity meter calibration procedures, to be maintained on the inspection station's computer.
- I.B.41. "Opacity Testing" means the testing of motor vehicles using procedures prescribed in this regulation in order to determine the magnitude (expressed as a percentage) of obscured light (opacity) due to exhaust constituents, mainly fine particles.
- I.B.42. "Opacity Worksheet" means worksheet provided by the Division for recording measured opacity levels during dynamometer testing for determining opacity compliance, to be maintained in a file at the station for auditing purposes.
- I.B.43. "Phototachometer" means a non-contact rotational speed measuring instrument which processes data received from a reflected light beam and remotely displays the results as revolutions per minute (rpm).

- I.B.44. "RPM" means revolutions per minute as pertaining to engine crankshaft speed.
- I.B.45. "Routinely Operated" or "Principally Operated" means operated for 90 days or more in any 12 month period.
- I.B.46. "SAE" means Society of Automotive Engineers.
- I.B.47. "State Emissions Technical Centers" are those facilities, operated by the Department of Public Health and Environment for technical or administrative support of the AIR Program and the Diesel Opacity Inspection Program.
- I.B.48. "Stripchart Recorder or Digital Recording Device" means an instrument which receives and records data from one or more electrical inputs and displays that information in the form of real-time, continuous (non-impact) tracings on paper, or stores and displays that information electronically.
- I.B.49. "Training Program" means instruction developed by the Division for training diesel opacity inspectors.
- I.B.50. "WOT" means wide open throttle.

I.C. Applicability

I.C.1. Geographic Area of Applicability

This regulation shall apply to the AIR Program area as defined in Section 42-4-401 (8) C.R.S.

I.C.2. Vehicles Eligible for Diesel Opacity Inspection Program

Part B of this regulation shall apply to all diesel-fueled motor vehicles as defined in Section 42-4-401 (5) C.R.S., except those diesel-powered vehicles subject to the provisions for Part A of this regulation (Diesel Fleet Self-Certification Program), pursuant to Section 42-4-414, C.R.S.

- I.C.2.a. The burden of proof in establishing an exemption from all or any part of the diesel opacity inspection requirements is on the vehicle owner. Any applications for exemptions must be submitted to the Colorado Department of Revenue for approval.

I.D. Conditions for Issuance of Certification of Emissions Control

- I.D.1. A diesel vehicle which is registered or required to be registered in the program area, routinely operates in the program area or is principally operated from a terminal, maintenance facility, branch or Division located within the program area shall not be sold, registered for the first time in the program area or reregistered, unless such vehicle has a Certification of Emissions Control.

- I.D.2. For new diesel motor vehicles being registered for the first time, a Certification of Emissions Control shall be issued without testing for diesel opacity compliance. Prior to the expiration of such certification, such vehicle shall be inspected and a Certification of Emissions Control shall be obtained for diesel smoke opacity compliance.

- I.D.2.a. For light duty diesel vehicles, such certificate shall expire on the earliest to occur:

- I.D.2.a.i. The anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year.

I.D.2.a.ii. The date of the transfer of ownership if such date is within twelve months before such certification would expire, Pursuant to Section I.D.2.a.i., unless such transfer of ownership is a transfer from the lessor to the lessee.

I.D.2.b. For heavy-duty vehicles, such certification shall expire on the earliest to occur:

I.D.2.b.i. The anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year, or

I.D.2.b.ii. The date of the transfer of ownership if such date is within twelve months before such certification would expire, Pursuant to Section I.D.2.a.i. unless such transfer of ownership is a transfer from the lessor to the lessee.

I.D.2.b.iii Any new heavy-duty diesel vehicle of model year 2014 or newer having a Gross Vehicle Weight Rating of twenty six thousand pounds or greater is exempt from testing until such vehicle has reached its sixth model year, or until the date of the transfer of ownership prior to the expiration of such exemption, if such transfer is within twelve months before such exemption ends.

I.D.2.c. For heavy- duty diesel vehicles ten model years old and newer the Certificate of Emissions Control will be valid for two years from the date of issuance.

I.D.2.d. For light-duty diesel vehicles ten model years old and newer the certificate of emissions control will be valid for two years from the date of issuance.

I.D.2.e. For heavy- duty diesel vehicles greater than ten model years old the Certificate of Emissions Control will be valid for one year from the date of issuance.

I.D.2.f. For light-duty diesel vehicles greater than ten model years old the certificate of emissions control will be valid for one year from the date of issuance.

I.D.3. For used diesel vehicle retail sales transactions by a licensed dealer conducted within the AIR Program area, a Certification of Diesel Smoke Opacity Compliance will be required at the time of sale. The responsibility of complying with the inspection provisions is that of the selling dealer.

I.D.4. A "Certification of Diesel Smoke Opacity Compliance" shall be issued by a licensed diesel inspection station to any diesel vehicle which has been inspected and tested according to the procedures in Part B, Section III of this regulation and found to be within applicable smoke opacity limits and equipment requirements as stated in Sections IV and V, Part B of this regulation.

I.D.5. No Certification of Diesel Emissions Control may be issued to a diesel vehicle of model year 1991 and newer if there is evidence of diesel emissions control system tampering, as determined by the procedures described in Section III. A.4. of Part B of this regulation.

I.D.6. A temporary Certification of Emissions Control may be issued by a Department of Revenue AIR Program Air Environmental Systems Technician to those vehicles which fail the initial opacity inspection and continue to exceed applicable opacity standards, and for which needed parts are not presently available in order to make corrective repairs to that specific vehicle.

- I.D.7. A "Certification of Diesel Smoke Opacity Waiver" shall be issued by a Department of Revenue AIR Program Air Environmental Systems Technician to any diesel vehicle which has been reinspected after failing the initial opacity inspection procedure as prescribed in Part B, Section III of this regulation, and exceed the applicable smoke opacity limits as stated in Section V of this Part B of this regulation, and for which proper presentation of documented evidence, of expenditures for smoke emissions related adjustments and repairs have been made which equal or exceed minimum dollar expenditures as follows:
- I.D.7.a. For light-duty diesel vehicles (less than or equal to 14,000 pound GVWR) a minimum expenditure of seven hundred and fifty dollars (\$750) must be made in an attempt to comply with smoke opacity standards.
- I.D.7.b. For heavy-duty diesel vehicles (greater than 14,000 pounds GVWR), a minimum expenditure of fifteen hundred dollars (\$1500) must be made in an attempt to comply with smoke opacity standards.
- I.D.7.c. Confirmation of documented evidence that minimum expenditures for smoke emissions related repairs have been made and issuance of a "Certification of Diesel Smoke Opacity Waiver" shall be made only by a Department of Revenue AIR Program Air Environmental Systems Technician.
- I.D.7.d. Documented proof of smoke emissions repair costs for the specific failing vehicle shall be in the form of an itemized bill, invoice, work order, manifest, or statement, for the following types of work and/or parts:
- I.D.7.d.i. Replacements, adjustments and repairs to the diesel vehicle which are directly related to the reduction of exhaust smoke, necessary to comply with the applicable opacity standards.
- I.D.7.d.ii. Replacements, repairs and adjustments to the following systems shall qualify as emissions related repairs for the purpose of reducing exhaust smoke opacity:
- I.D.7.d.ii.A. Air intake systems
- I.D.7.d.ii.B. Fuel system components, including fuel injection pumps, injectors and related components.
- I.D.7.d.ii.C. Exhaust systems
- I.D.7.d.ii.D. Turbochargers and superchargers, scavenging pumps (blowers) for two-stroke cycle engines
- I.D.7.d.ii.F. Fuel control systems, utilized to control the air/fuel ratio, including microprocessor/electronic control systems, mechanical systems, hydraulic systems or pneumatic systems.
- I.D.7.d.ii.G. Basic Engine Systems
- I.D.7.d.iii. The expenditure for smoke reduction activities does not include the opacity inspection or reinspection fee(s) as specified in C.R.S. Section 42-4-408(3), nor does the expenditure include the costs of replacement, adjustment, or repair of air pollution control equipment due to instances of neglect, maladjustment, abuse, tampering or disconnection.

I.D.7.d.iv. Air pollution control equipment is any part, assembly or system originally installed by the manufacturer for the sole or primary purpose of reducing emissions. Such equipment shall include, but is not limited to, the On-Board Diagnostic (OBD) system, exhaust aftertreatment devices, and exhaust gas recirculation (EGR) systems.

I.E. Fees for Diesel Opacity Inspections

I.E.1. Initial Opacity Inspection Fees

A licensed Diesel Opacity Inspection station shall charge a fee not to exceed the hourly shop rate for one hour as posted by the station pursuant to Section IV.A.4 of this regulation, for the inspection of any diesel-fueled motor vehicle required to be inspected pursuant to this regulation.

I.E.2. Reinspection Fees for Vehicles Failing Initial Opacity Inspection

If the vehicle fails the initial opacity inspection, the vehicle owner has 30 days in which to have repairs or adjustments made and return the vehicle to the licensed diesel inspection station which performed the initial inspection for one reinspection at a cost not exceeding the posted hourly shop rate for one hour.

I.E.3. Certificate of Emissions Control Fee

In order to encompass costs incurred by the Department of Revenue and the Department of Health in the administration, operation and evaluation of the diesel Opacity Inspection Program Certificate of Emissions Control (CEC) credits shall be sold to licensed diesel vehicle inspection stations for a cost of five dollars (\$5) each. Certificates of emissions control must be purchased from the agency designated by the Commission (AQCC). Licensed stations will be charged for the passing test records generated.

I.E.4. Home Rule Inclusion in the Diesel Opacity Inspection Program.

Any home rule city, town, or county shall, upon request by the governing body of such local government to the Department of Health and the Department of Revenue, be included in the Diesel Opacity Inspection Program. When such a request is made, said departments and governing body shall agree to a start-up date for the Diesel Opacity Inspection Program in such areas. On or after such dates, all diesel-fueled motor vehicles which are registered in the area shall be inspected and required to comply with the provisions of this regulation, as if such area was in the AIR Program area.

II. Test Equipment Requirements

Standards and procedures for the operation, adjustment, calibration and certification of the Division approved smoke opacity meters, chassis dynamometers, and other required equipment in the performance of diesel opacity inspections for the Diesel Opacity Inspection Program.

II.A. Approval of Required Test Equipment

Diesel opacity inspection required by the Diesel Opacity Inspection Program shall not be performed unless the equipment used meets the specifications of the Colorado Diesel Opacity Inspection Program as defined in this regulation and as approved by the Division. Opacity meters, chassis dynamometers, photo tachometers and strip chart recorders must be approved by the Division. A manufacturer requesting the approval of an instrument for use in Colorado's Diesel Opacity Inspection Program shall make application thereof on forms provided thereby, and sources of vendors for the qualifying instruments may be obtained from the Program Administrator, Mobile Sources Section, Air Pollution Control Division,

Colorado Department of Public Health and Environment, 4300 South Cherry Creek Drive, Denver, CO, 80246.

II.B. Running Changes and Equipment Updates

Any changes to design or performance characteristics of components specifications which may affect equipment or instrument performance must be approved by the Commission. It will be the instrument manufacturer's responsibility to confirm that such changes have no detrimental effect on opacity meter or other equipment or instrument performance. All equipment and instruments used in Colorado's Diesel Opacity Inspection Program will be updated as needed and specified in revisions to Commission Regulation Number12.

II.C. Opacity Meter

Every licensed station shall have on the premises an approved portable opacity meter meeting specifications to conduct opacity tests for the Diesel Opacity Inspection Program. Only opacity meters approved by the Division shall be used for opacity inspections in the Diesel Opacity Inspection program.

The opacity meter is to be portable in design and function with an emphasis on compactness and light weight. The instrument will consist of two major, separate components connected by an interconnecting cable. The major components are the stack monitor/sensor and the control/indicator unit.

II.C.1. Opacity Meter Specifications

II.C.1.a. Stack Monitor/Sensor

II.C.1.a.i. Must be adaptable by means of a quick connect device, to exhaust piping and outlets having outside diameters from two to six inches.

II.C.1.a.ii. Light Source: Light emitting diode (LED), pulsed green light.

II.C.1.a.iii. Light Detector: Silicon photo detector.

II.C.1.a.iv. Provide for in line continuous measurement of exhaust opacity.

II.C.1.b. Control/Indicator Unit

II.C.1.b.i. Meter Display

II.C.1.b.i.A. Range: 0-100 percent opacity

II.C.1.b.i.B. Accuracy

II.C.1.b.i.C. Digital read-out; Plus or minus two percent of full scale

II.C.1.b.i.D. Drift: Less than 2.5% per hour

II.C.1.b.i.E. Response time: Less than two seconds from 0-100% of scale

II.C.1.b.i.F. Peak Hold Feature

II.C.1.b.ii. Warm-up time: Not to exceed ten minutes

- II.C.1.b.iii. Operating temperature range: 35°-120°F.
- II.C.1.b.iv. Integrated with a chart recorder/digital recording device and/or provide for a linear 0-1 VDC OR 0-10 VDC output signal.
- II.C.1.b.v. Power Requirements
 - II.C.1.b.v.A. 115 Volts AC input
 - II.C.1.b.v.B. Internal replaceable or rechargeable batteries allowing for operation independent of AC input.
- II.C.1.b.vi. Connecting Cable
 - II.C.1.b.vi.A. Heat and abrasion resistant
- II.C.1.b.vii. Calibration: Opacity meters must be calibration checked weekly. Calibration results must be entered into the inspection software provided by the Department or Division.

II.C.2. Opacity meters meeting all SAE J1667 specifications shall be considered equivalent to the above Division specification.

II.D. Dynamometer Specifications and Criteria

II.D.1. Light-duty Dynamometers

II.D.1.a. Capacity: A minimum requirement is the capacity to absorb up to 180 horsepower at speeds between 50 and 80 miles per hour (mph), capable of accommodating vehicles with individual axle loads up to 5, 000 lbs.

II.D.1.b. Rolls: Minimum roll diameter: 8.5 inches.

II.D.1.c. Load and Speed Control

II.D.1.c.i. Infinitely variable throughout the load and speed range from no-load to full-load. Reference the dynamometer's "performance envelope" or power absorption capacity curve.

II.D.1.c.ii. Ability to set a load or speed and until deactivated, maintain that preset setting without additional input from the load controller.

II.D.1.d. Instrumentation: Interfaced, calibrated horsepower and road speed indicators located in such a manner to be readily visible and discernible by the operator of the vehicle under test.

II.D.1.e. Calibration:

II.D.1.e.i. Provision for field checking the accuracy of the dynamometer's calibration including the electrical output signal, interface and attendant instrumentation.

II.D.1.e.ii. Availability of manufacturer's recommended/ specified equipment, tools and procedures for the field calibration and adjustment of the dynamometer.

II.D.2. Heavy-duty Dynamometers

II.D.2.a. Capacity: A minimum requirement is the capability to absorb a minimum of 400 horsepower at speeds between 50 and 80 mph. Capable of accommodating vehicles with individual axle loads up to 22,000 lbs.

II.D.2.b. Rolls:

II.D.2.b.i. Minimum roll diameter: 8.5 in.

II.D.2.b.ii. Tandem axle capability to accommodate, at a minimum, vehicle interaxle spacing of 48 to 58 inches.

II.D.2.c. Load and Speed Control:

II.D.2.c.i. Infinitely variable throughout the load and speed range from no-load to full-load. Reference the dynamometer's "performance envelope" or power absorption capacity curve.

II.D.2.c.ii. Ability to set a load or speed and until deactivated, maintain that preset setting without additional input from the load controller.

II.D.2.d. Instrumentation: Interfaced, calibrated horsepower and road speed indicators located in such a manner to be readily readable and discernible by the operator of the vehicle under test.

II.D.2.e. Calibration:

II.D.2.e.i. Provision for field checking the accuracy of the dynamometer's calibration including the electrical output signal, interface and attendant instrumentation.

II.D.2.e.ii. Availability of manufacturer's recommended/ specified equipment, tools, and procedures for the field calibration and adjustment of dynamometer.

II.E. Other Required Equipment for Diesel Opacity Inspection Stations.

II.E.1. Photo Tachometer (Heavy-Duty Vehicle Inspection Stations Only)

Every heavy-duty diesel vehicle inspection station shall have a photo tachometer capable of sensing a vehicle's engine rpm and digitally displaying that rpm in the vehicle operator's compartment. This tachometer must be capable of measuring rpm from 0-6000 rpm with an accuracy of plus or minus five rpm or better. For heavy-duty on-road testing stations this unit must be of portable design with the readout capable of being read from the vehicle's cab, and must be easily interfaced with the strip chart recorder.

II.E.2. Strip Chart Recorders/Digital Recording Devices (Heavy-duty On-Road Inspection Stations Only)

In those instances where on-road opacity testing will be utilized, strip chart recorders/digital recording devices shall be used in order to accurately monitor and analyze the test sequence.

Description of an approved strip chart recorder/digital recording device is as follows:

II.E.2.a. Recorder capable of accurately recording data in a moving heavy-duty vehicle.

II.E.2.b. Unit is to be powered by internal batteries (rechargeable or non-rechargeable) or 12 VDC external sources. A 115 VAC, 60 Hz, unit powered by means of a DC/AC inverter is also acceptable.

II.E.2.c. A minimum of two channels for recording 1) exhaust opacity and, 2) engine speed (rpm).

II.E.2.d. A recorder chart/display speed of approximately four to eight inches/min. (10 to 20 cm/min).

II.E.2.e. A minimum chart paper/display width of three inches.

II.E.3. Certified Neutral Density Filter.

A neutral density filter, certified and calibrated by the Division, must be kept by each diesel testing station for weekly calibration checks of the opacity meter. The results of the calibration checks of each approved opacity meter must be entered into the inspection software provided by the Division and made available to Department of Revenue Air Environmental Systems Technicians upon request during station inspections.

II.E.4. Certified Thermometer

For use in the Diesel Opacity Inspection Program, the thermometer must be a laboratory grade ambient temperature measuring device with a range of at least 20°F (twenty degrees) through 120°F (one-hundred-twenty degrees) and an attested accuracy of at least plus or minus 1° (one degree) Fahrenheit with increments of one degree, with protective shielding, and approved by the Department of Revenue.

II.E.5. Safety Restraint Equipment

Adequate safety restraint equipment for all dynamometer test stations is required. Restraint equipment must be capable of restraining the type of vehicles tested at that station. Equipment may be chains, fabric tie-down straps, wheel chocks, as appropriate and as approved upon licensing.

II.E.6. Hearing ear protectors, as needed.

II.E.7. Auxiliary engine cooling fan.

Light-duty inspection stations are required to have available on premises and for use during opacity inspections, an auxiliary engine cooling fan which meets the following minimum specifications:

Guarded fan complying with OSHA regulations.

CFM free air delivery of 3200 CFM

Fan diameter of 24 inches.

¼ H.P. motor.

II.E.8. Exhaust gas removal equipment.

If a closed exhaust system is utilized, the pressure within the system shall be maintained between 4 inches H₂O positive pressure and 2 inches H₂O negative pressure at all times when any given vehicle is undergoing opacity testing.

II.E.9. Required reference materials.

II.E.10. Basic hand tools necessary to perform inspection.

III. Procedures and Practices to Ensure the Proper Performance of Opacity Inspections

III.A. General Inspection Requirements

III.A.1. All aspects of the inspection must be performed by a licensed diesel emissions inspector. It is the responsibility of the inspector to notify the Department of Revenue of his/her current place of employment.

III.A.2. The inspection shall take place at the address of the station license.

III.A.3. The temperature of the inspection area (or ambient temperature for on-road tests) shall be between 35°F and 110°F (2°C and 43°C) during the inspection. Temperatures during the inspection must be accurately recorded and monitored in a well-ventilated location, away from vehicle engine and exhaust heat sources and out of direct sunlight.

III.A.4. For 1991 and later model year diesel vehicles, the diesel emissions inspector shall perform an inspection for the integrity of the emissions control systems and/or devices as listed on the vehicle's emissions control label or in an emissions control systems application guide. The following system/devices if original equipment manufacturer supplied must be installed, intact and apparently operational:

III.A.4.a. Any fuel injection pump seals and covers.

III.A.4.b. Fuel control systems, utilized to control the air/fuel ratio, including microprocessor/electronic control systems, mechanical systems, hydraulic systems or pneumatic systems.

III.A.4.c. Exhaust aftertreatment device systems.

III.A.4.d. Engine computer controls, related sensors, actuators, malfunction indicator, or service maintenance reminder lights. Engine computer control hardware and software must be original equipment, or must be certified by the California Air Resources Board or USEPA for on-road use for that particular vehicle/engine.

III.A.4.e. Positive crankcase ventilation, crankcase depression and air box drain equipment, including their hoses, pipes, valves and connectors.

III.A.4.f. The exhaust gas recirculation valve and related coolers, piping and control systems.

III.A.4.g. Related hoses, connectors, brackets, and hardware for these components.

III.A.4.h. Any other emissions-related components for a particular vehicle/engine as listed on a vehicle evaluation form (DR2365) issued by Emissions Technical Center staff.

III.A.4.i. The vehicle shall fail the inspection if the emission control components are found to be tampered, defective, or otherwise rendered partially or completely inoperative. When determining original equipment emissions control systems/devices, the vehicle's under-the-hood emissions control label takes precedence over any other sources of information. Any aftermarket replacement devices and software must be certified by the California Air Resources Board (CARB) or USEPA for on-road use for that particular vehicle/engine. It is the vehicle owner's responsibility to prove the acceptability of aftermarket devices/software, by producing a CARB Executive Order statement for such devices/software

III.B. Inspection Procedure for Light-Duty Diesel Vehicles (14,000 GVWR and less)

III.B.1. Preliminary Check of Vehicle

- III.B.1.a. Safety check vehicle (tires, drive-line, etc.)
- III.B.1.b. Ensure engine lube oil and coolant levels are at proper levels.
- III.B.1.c. For vehicles with multiple exhaust outlets, operate engine, observe and determine which emits the heavier exhaust smoke. During testing, monitor the exhaust outlet which emits the heavier smoke, if there is a difference in smoke levels.

III.B.2. Diesel Vehicle Inspection Report Forms (DVIR)

- III.B.2.a. The opacity inspector shall accurately identify and enter vehicle and owner information from vehicle to be tested as required on the DVIR.

III.B.3. Prepare Vehicle for Opacity Testing

- III.B.3.a. Locate vehicle on dynamometer.
- III.B.3.b. Secure vehicle with adequate safety restraints such as chains, nylon straps, wheel chocks or tie downs.
- III.B.3.c. Locate auxiliary engine cooling fan in front of vehicle radiator or engine cooling inlet, whichever is applicable.
- III.B.3.d. Vehicle is to be at a stabilized normal operating temperature. This shall be determined by feeling the top radiator hose, by checking the temperature gauge, and/or operating the vehicle prior to performing the inspection.
- III.B.3.e. Zero/span opacity meter following manufacturer's specifications. Clean and recalibrate as necessary before conducting test.
- III.B.3.f. Attach pre-calibrated opacity meter to vehicle's exhaust outlet and calibrate meter according to the manufacturer's instructions.

III.B.4. Opacity Testing

Opacity testing of light-duty diesel vehicles involves a dynamometer loaded-mode lug-down test procedure.

Engine temperature and oil pressure are to be closely monitored during all testing. Testing is to be discontinued if engine and vehicle operating parameters are not within acceptable limits.

III.B.4.a. Dynamometer Test Procedure

III.B.4.a.i. Verify smoke opacity meter is set at zero. Start and operate engine at idle rpm. With the dynamometer in an unloaded mode/condition and the vehicle in direct or drive gear (do not use overdrive), slowly increase vehicle speed to 60 mph (plus or minus two mph). Continue to maintain (by manual or automatic control) 60 mph while slowly increasing dynamometer loading until maximum horsepower (hp) is developed at 60 mph. Maintain this full throttle speed/load condition for a minimum of 10 seconds (plus or minus four seconds) and record mph, opacity, and hp on Opacity Worksheet. Proceed directly to Step iii.

III.B.4.a.ii. NOTE: Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the dynamometer lugdown test. If a downshift occurs, continue with the test.

III.B.4.a.iii. While maintaining full throttle; slowly increase the dynamometer loading until a vehicle speed of 50 mph (plus or minus two mph) is achieved. Maintain this full throttle speed/load condition for a minimum of 10 seconds (plus or minus four seconds) and record mph, opacity, and hp on Opacity Worksheet. Proceed directly to Step (iv).

III.B.4.a.iv. While maintaining full throttle; slowly increase the dynamometer loading until a vehicle speed of 40 mph (plus or minus two mph) is achieved. Maintain this full throttle speed/load condition for a minimum of ten seconds (plus or minus four seconds) and record mph, opacity, and hp on Opacity Worksheet.

III.B.4.a.v. Slowly remove dynamometer loading while returning engine to idle. Shut down engine after observing cool down procedure. Note and record residual opacity meter reading on Opacity Worksheet.

III.B.4.a.vi. The inspector shall refer to the opacity standards in Section V of Part B of this regulation.

III.B.4.a.vi.A. If the highest opacity reading taken from steps (i) through (iv) exceeds the opacity standard and the opacity meter shift exceeds five percent (5%), clean the lenses, zero meter and repeat the dynamometer test procedure starting at step (i). At least one additional test will be conducted at no cost to the motorist.

III.B.4.a.vi.B. If the highest opacity reading taken from steps (i) through (iv) exceeds the opacity standard and the opacity meter zero shift is less than five percent (5%), the vehicle fails the inspection.

III.B.4.a.vii. The inspector shall then enter the highest opacity reading, the opacity meter zero shift, the pass/fail determination, provide an electronic signature and other required information on the DVIR media.

Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

III.B.5. Vehicle Removal from Dynamometer

III.B.5.a. Detach all test equipment, restraints and remove them from the vehicle.

III.B.5.b. Remove vehicle from dynamometer

III.C. Dynamometer Inspection Procedures for Heavy-Duty Diesel Vehicles (Greater than 14,000 pounds GVWR.)

III.C.1. Preliminary Check of Vehicle

III.C.1.a. Safety check vehicle (tires, drive-line, etc.)

III.C.1.b. Ensure engine lube oil and coolant levels are at proper levels.

III.C.1.c. Verify proper operation of vehicle tachometer, or mount and connect approved photo tachometer.

III.C.1.d. For vehicles with multiple exhaust outlets, operate engine, observe and determine which outlet emits the heavier exhaust smoke, if there is a difference. During testing, monitor the exhaust outlet which emits the heavier smoke.

III.C.2. Diesel Vehicle Inspection Reports (DVIR)

III.C.2.a. The opacity inspector shall accurately identify and enter vehicle and owner information from vehicle being tested as required on the DVIR.

III.C.2.b. Determine the engine's rated horsepower and attendant rpm and enter on DVIR and also on the opacity worksheet

III.C.3. Prepare Vehicle for Opacity Testing

III.C.3.a. Locate vehicle on dynamometer.

III.C.3.b. Secure vehicle with adequate safety restraints such as chains, nylon straps, wheel chocks or tie downs.

III.C.3.c. Vehicle is to be at a stabilized operating temperature. This shall be determined by feeling the top radiator hose, by checking the temperature gauge, and/or by operating the vehicle prior to performing the inspection.

III.C.3.d. Zero/span opacity meter, following manufacturer's specifications. Clean and recalibrate, as necessary, before conducting test.

III.C.3.e. Attach pre-calibrated opacity meter to vehicle's exhaust outlet and calibrate meter according to the manufacturer's instructions.

III.C.4. Opacity Testing

Dynamometer opacity testing of heavy-duty diesel vehicles involves two separate and distinct test procedures. The two tests are 1) a snap/free no-load acceleration test and 2) a dynamometer loaded-mode lug-down test procedure.

Engine temperature and oil pressure are to be closely monitored during all testing. Testing is to be discontinued if engine and vehicle operating parameters are not within acceptable limits.

NOTE: If the vehicle is equipped with a temperature regulated radiator shutter or modulating fan and its operation is erratic, unstable or questionable, secure the shutter in the open position for the duration of the opacity test.

III.C.4.a. Snap/Free Acceleration Test Procedure

This procedure requires a rapid Wide Open Throttle (WOT) no-load acceleration of the engine from low idle to maximum governed no-load rpm with the transmission in neutral

III.C.4.a.i. Verify the zero setting of the opacity meter. Start and operate the engine at idle rpm.

III.C.4.a.ii. With the transmission in neutral and the engine at idle rpm, slowly accelerate the engine allowing the engine to reach its maximum stabilized governed speed. Allow the engine to return to idle.

III.C.4.a.iii. Place the opacity meter in the peak hold position.

III.C.4.a.iv. Perform the acceleration procedure as in Step (ii), but rapidly accelerate the engine. Record on the opacity worksheet the highest or peak smoke opacity reading attained during the procedure.

III.C.4.a.v. Return the engine to idle rpm and shut down engine.

III.C.4.a.vi. Return opacity meter to normal mode (peak hold off) and note zero shift (deviation) reading. Record the peak opacity value obtained in step (iv) and the meter zero shift on the DVIR, and proceed to the dynamometer test procedure.

III.C.4.b. Dynamometer Test Procedure

III.C.4.b.i. Verify smoke opacity meter is set at zero. Start and operate engine at idle rpm. With the dynamometer in an unloaded mode/condition, select a gear which will allow the vehicle to attain and maintain a no-load vehicle speed of 60 to 70 miles per hour (mph) at wide open throttle (WOT). It is preferred and recommended that vehicle be operated at the lower end of this mph range whenever possible. If vehicle has a maximum road speed that is less than 60 mph, operate vehicle at the highest mph possible. Upon stabilization, maintain speed for at least ten seconds (plus or minus four seconds) and record engine rpm and mph on opacity worksheet.

III.C.4.b.ii. While maintaining full throttle (WOT), slowly increase the dynamometer loading until engine rated rpm (plus or minus 15 rpm) is obtained. Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and horsepower (hp).

III.C.4.b.iii. Maintain full throttle (WOT) and slowly increase dynamometer loading until engine is at 90% of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten seconds (plus or minus four

seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and hp.

III.C.4.b.iv. Maintain full throttle (WOT) and slowly increase dynamometer loading until engine is at 80% of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and hp.

III.C.4.b.v. Maintain full throttle (WOT) and slowly increase dynamometer loading until engine is at 70% of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and hp. This step concludes the engine loading procedure; do not apply additional loading under any circumstances.

III C.4.b.vi. Note: Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the dynamometer lugdown test. If a downshift occurs, continue with the test.

III.C.4.b.vii. Slowly remove dynamometer loading while returning engine to idle. Shutdown engine after observing cool down procedure. Note and record residual opacity meter reading on Opacity Worksheet.

III.C.4.b.viii. The inspector shall refer to the opacity standards in Section V of Part B of this regulation.

III.C.4.b.viii.A. If the highest opacity reading taken from steps (ii) through (v) exceeds the opacity standard and the opacity meter zero shift exceeds five percent (5%), clean the lenses, zero meter and repeat the dynamometer test procedure starting at step (I). At least one additional test will be conducted at no cost to the motorist.

III.C.4.b.viii.B. If the highest opacity reading taken from steps (ii) through (v) exceeds the opacity standard and the opacity meter zero shift is less than five percent (5%), the vehicle fails the inspection.

III.C.4.b.viii.C. If neither the highest opacity meter reading taken in steps (ii) through (v) nor the opacity meter zero shift exceeds the opacity standard, the vehicle passes the inspection.

III.C.4.b.ix. The inspector shall then enter the highest opacity reading, the opacity meter zero shift, the pass/fail determination, provide an electronic signature, and other required information on the DVIR. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

III.C.4.c. Vehicle Removal from Dynamometer

III.C.4.c.i. Detach all test equipment, restraints and remove them from the vehicle.

III.C.4.c.ii. If the vehicle is equipped with a radiator shutter or modulating fan which has been secured in the open position prior to testing, restore unit to normal operation.

III.C.4.c.iii. Remove vehicle from dynamometer.

III.D. On-Road Inspection Procedures for Heavy-Duty Diesel Vehicles (Greater than 14, 000 pounds GVWR)

III.D.1. Test Site Requirements and Conditions

In addition to the prescribed test equipment and other requirements, as set forth by this regulation, a test site will only be considered adequate for on-road opacity testing when there is:

III.D.1.a. Approximately three-hundred (300) yards of sound, smooth, paved test lane in a safe, uncongested area on private property (non-public roads).

III.D.1.b. An ambient temperature between 35°F and 110°F (2°C and 43°C) during any given vehicle test procedure.

III.D.1.c. An opacity inspector licensed by the Department of Revenue and in possession of a valid opacity inspector license.

III.D.1.d. A driver, knowledgeable in the operation of the vehicle to be tested and in possession of a valid operator's license relative to that vehicle. (Refer to IV.B.3)

III.D.2. Vehicle Preparation

Prior to proceeding with the actual opacity testing of the vehicle, the following guidelines must be followed:

III.D.2.a. Verify that the vehicle to be tested meets the program definition of a heavy-duty vehicle (Greater than 14,000 pounds GVWR).

III.D.2.b. Vehicle is to be equipped with a speedometer in good working order.

III.D.2.c. Perform a safety inspection of the vehicle's brakes, tires and driveline for defects or unsafe conditions.

III.D.2.d. Enter the requested vehicle/owner information on the Diesel Vehicle Inspection Report (DVIR).

III.D.2.e. Determine the engine's rated horsepower and attendant rpm and enter on DVIR and also on the opacity worksheet.

III.D.2.f. Securely mount the test/reference tachometer and interface it with the approved strip chart recorder which is to be located in the vehicle's cab. Ensure that all wires and cables do not pose any potential safety hazards.

III.D.2.g. Securely attach the approved/registered opacity meter to the vehicle's exhaust piping. If a full-flow opacity meter is to be used, ensure that the optical pickup head is attached in such a manner that the opacity meter's emitter and detector light path is perpendicular to the vehicle's direction of travel and is centered approximately 5" plus or minus 1" from the exhaust outlet. Interface the

meter with the strip chart recorder. Follow the calibration procedures prescribed by the equipment manufacturers.

III.D.3. Test Procedures

The on-road opacity testing of heavy-duty diesel vehicles involves two separate and distinct test procedures. The two tests are 1) a snap/free no-load-mode acceleration test and, 2) either an on-road load-mode acceleration test or an on-road loaded-mode brake lug-down test.

III.D.3.a. Snap/Free Acceleration Test Procedure

This procedure requires a rapid Wide Open Throttle (WOT) no-load acceleration of the engine from low idle to maximum governed no-load rpm with the transmissions in neutral.

III.D.3.a.i. Verify the zero settings of the opacity meter and chart recorder. Start and operate the engine at idle rpm.

III.D.3.a.ii. With the transmission in neutral and the engine at idle rpm, slowly accelerate the engine allowing the engine to reach its maximum stabilized no-load governed speed. Allow the engine to return to idle.

III.D.3.a.iii. Place the opacity meter in the peak hold position.

III.D.3.a.iv. Perform the acceleration procedure as in Step (ii), but rapidly accelerate the engine. Record on the opacity worksheet the highest or peak smoke opacity reading attained during the procedure.

III.D.3.a.v. Return the engine to idle rpm and shutdown engine.

III.D.3.a.vi. Return opacity meter to normal mode (peak hold off) and note zero shift (deviation) reading. Record the peak opacity value obtained in step (iv) and the meter zero shift on the DVIR, and proceed to the on-road test; either acceleration or lugdown procedure, as applicable.

III.D.3.b. On-Road Acceleration Opacity Test Procedure

III.D.3.b.i. Verify smoke opacity meter and chart recorder/digital recording device are set at zero. Start and operate engine at idle rpm.

Select a gear which will permit the vehicle to accelerate under WOT from a moving position (approximately 900 to 1000 engine rpm) up to maximum engine rpm in no less than seven seconds. This step is vital in order to ensure that the engine will be operated in an rpm range and time frame which will allow sufficient time and engine loading in order to accurately monitor the vehicle's smoke opacity levels.

III.D.3.b.ii. Bring the vehicle to a stop and shutdown the engine. Verify the zero settings of the opacity meter and the strip chart recorder. Clean the monitoring unit as necessary.

III.D.3.b.iii. With the transmission in the selected gear (as described in Step (i) and the strip chart recorder in record mode, accelerate the vehicle under WOT from a road speed equivalent of 900 to 1000 engine rpm up to maximum engine rpm. Maintain maximum rpm for a few seconds in order to allow for stabilized conditions.

III.D.3.b.iv. Bring the vehicle to a safe controlled stop, shut down engine and discontinue the recording. Note and record on the opacity worksheet, 1) the highest opacity reading observed between maximum engine rpm and 70 percent (70%) rated rpm and, 2) the opacity meter/chart recorder zero shift (deviation) reading.

III.D.3.b.v. The inspector shall refer to the opacity standards in Section V of Part B of this regulation.

III.D.3.b.vi. If the highest recorded opacity taken from step (iii) through (iv) exceeds the opacity standard and the opacity meter/chart recorder zero shift (deviation) exceeds five percent (5%), clean the lenses, zero meter and repeat the acceleration test procedure starting at step (iii). At least one additional test will be conducted at no cost to the motorist.

III.D.3.b.vi.A. If the highest opacity reading taken from steps (iii) through (iv) exceeds the opacity standard over the required time period, with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.b.vi.B. If neither the highest opacity meter reading taken in steps (iii) through (vi) nor the zero shift exceeds the opacity standard, the vehicle passes the inspection and the inspector shall proceed directly to step (xi).

III.D.3.b.vi.C. If the highest opacity meter reading exceeds the opacity standard with five percent (5%) or less zero shift, but for less than the required time period, the vehicle will require additional testing as follows.

III.D.3.b.vii. Verify the zero settings of the opacity meter and strip chart recorder. Clean the monitoring unit as necessary.

III.D.3.b.viii. Accelerate the vehicle as in step (iii), however, the vehicle's acceleration must be temporarily restrained (10 ± 4 seconds) at that rpm point in the procedure where the highest opacity reading was observed. Decreased throttle is not to be used to slow the vehicle's rate of acceleration. The vehicle's service brakes should be utilized for that purpose. Opacity and rpm must be accurately recorded at this time.

III.D.3.b.ix. Bring the vehicle to a safe controlled stop, shut down engine, and discontinue the recording. Note the highest opacity meter reading and the opacity meter/chart recorder zero shift.

III.D.3.b.x. If the highest opacity meter reading taken from steps (viii) and (ix) exceeds the opacity standard and the opacity meter/chart recorder zero shift (deviation) exceeds five percent (5%), clean the lenses, zero meter and repeat the acceleration test procedure starting at step (viii).

III.D.3.b.x.A. If the highest opacity reading taken from steps (viii) through (ix) exceeds the opacity standard over the required time period, with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.b.x.B. If neither the highest opacity meter reading taken in steps (viii) through (ix) nor the opacity meter zero shift exceeds the opacity standard, the vehicle passes the inspection.

III.D.3.b.xi. The inspector shall then enter the highest opacity reading, the opacity meter/chart recorder zero shift, the pass/fail determination, provide an electronic signature, and other required information on the DVIR. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

III.D.3.c. On-Road Brake Lug-Down Test Procedure

III.D.3.c.i. Verify smoke opacity meter and chart recorder are set at zero. Start and operate engine at idle rpm.

III.D.3.c.ii. Select a gear which will permit the vehicle to attain a road speed of 15 to 25 mph with the engine at maximum rpm, wide open throttle (WOT). Due to the many variables, this gear selection process is basically a trial and error effort. Bring the vehicle to a stop and shut-down the engine.

III.D.3.c.iii. Verify the zero settings of the opacity meter and strip chart recorder. Clean the monitoring unit as necessary.

III.D.3.c.iv. With the vehicle operating at WOT in the selected gear as described in Step (ii) and the chart recorder in record mode, maintain WOT and slowly begin loading the engine by means of the vehicle's service brakes. The loading is to be applied linearly throughout an engine rpm range which extends from maximum engine rpm down to 70 percent of the engine's rated rpm in a time span which encompasses no less than ten seconds.

III.D.3.c.v. Note: Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the brake lug-down test. If a downshift occurs, continue with the test.

III.D.3.c.vi. Bring the vehicle to a safe controlled stop, shut down engine and discontinue the recording. Note and record on the Opacity Worksheet, 1) the highest opacity reading observed between maximum engine rpm and 70% rated rpm and, 2) the opacity meter/chart recording zero shift (deviation) reading.

III.D.3.c.vii. The inspector shall refer to the Opacity Standards in Section V of Part B of this regulation.

III.D.3.c.viii. If the highest opacity meter reading taken from steps (iv) through (vi) exceeds the opacity standard and the opacity meter/chart recorder zero shift exceeds five percent (5%), clean the lenses, zero meter and repeat the brake lugdown test procedure starting at step (iv). At least one additional test will be conducted at no cost to the motorist.

III.D.3.c.viii.A. If the highest opacity meter reading taken from steps (iv) through (vi). exceeds the opacity standard over the required time period with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.c.viii.B. If neither the highest opacity meter reading taken in steps (iv) through (vi) nor the opacity meter zero shift exceeds the opacity standard, the vehicle passes the inspection and the inspector shall proceed directly to step (xiii).

III.D.3.c.viii.C. If the highest opacity meter reading exceeds the opacity standard with five percent (5%) or less zero shift but for less than the required time period, the vehicle will require additional testing as follows.

III.D.3.c.ix. Verify the zero settings of the opacity meter and chart recorder, clean the monitoring unit as necessary.

III.D.3.c.x. Again, operate the vehicle as in Step (iv); however restrain the vehicle for ten, plus or minus four, seconds (10 ± 4 seconds) by means of the vehicle's service brakes at the rpm point in the procedure where the highest opacity reading was observed.

III.D.3.c.xi. Bring the vehicle to a safe controlled stop, shut down engine and discontinue the recording. Note the highest opacity meter reading and the opacity meter/chart recorder zero shift.

III.D.3.c.xii. If the highest opacity meter reading taken from steps (x) and (xi) exceeds the opacity standard and the opacity meter/chart recorder zero shift exceeds five percent (5%), clean the lenses, zero meter and repeat the brake lugdown test procedure starting at step (x).

III.D.3.c.xii.A. If the highest opacity meter reading taken from steps (x) and (xi) exceeds the opacity standard over the required time period with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.c.xii.B. If neither the highest opacity meter reading taken in steps (x) through (xi) nor the zero shift exceeds the opacity standard, the vehicle passes the inspection.

III.D.3.c.xiii. The inspector shall then enter the highest opacity reading, the opacity meter/chart recorder zero shift, the pass/fail determination, provide an electronic signature, and other required information on the DVIR. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

IV. Qualification of Inspection Stations and Testing and Licensing of Diesel Opacity Inspectors

IV.A. Requirements for Licensing of a Diesel Opacity Inspection Station

IV.A.1. The following equipment and tools shall be available at Diesel Opacity Inspection Stations for performance of diesel opacity inspections:

IV.A.1.a. Smoke opacity meter (see Section II.C) in proper calibration according to the manufacturer's guidelines.

IV.A.1.b. Chassis dynamometer (see Section II.D). Not required for Heavy-Duty On-Road Test Stations.

- IV.A.1.c. Photo tachometer (See Section II.E.1).
- IV.A.1.d. Strip Chart Recorder (See Section II.E.2). Heavy-duty on-road test stations only.
- IV.A.1.e. Neutral density filter for calibration check of opacity meter. (See Section II.E.3).
- IV.A.1.f. Manufacturer's operation, maintenance and calibration manuals for opacity meters and dynamometers must be retained in the inspection area.
- IV.A.1.g. Certified thermometer, as described in Section II.E.4.
- IV.A.1.h. Safety restraint equipment, as described in Section II.E.5.
- IV.A.1.i. Hearing ear protectors.
- IV. A.1.j. Engine cooling fan. Required for light-duty inspection stations only.
- IV.A.1.k. Exhaust removal equipment.
- IV.A.1.l. Reference materials as required by licensing.
- IV.A.1.m. Basic hand tools necessary to perform inspection.

IV.A.2. The station must be a permanent location which meets all applicable zoning requirements to provide for the inspection of diesel vehicles, as licensed, and as defined in this regulation.

IV.A.3. A licensed diesel emissions inspector is employed and is available to make a proper inspection during all hours the station is open for business.

IV.A.4. All Diesel Opacity Inspection stations are required to post in a conspicuous location in a clearly legible fashion a sign indicating the fees charged for the initial inspection and first reinspection. Such fees shall not exceed the posted hourly shop rate for one hour. Inspection personnel shall notify diesel vehicle owners of the fee prior to performing any test procedure.

IV.A.5. Additional requirements for Heavy-duty On-Road Testing Stations

IV.A.5.a. Approximately three-hundred (300) yard of sound, smooth paved test lane in a safe, uncongested area, on private property (non-public roads).

IV.A.5.b. A driver knowledgeable in the operation of the vehicle to be tested and in possession of a valid operator's license relative to that vehicle.

IV.B. Testing and Licensing of Applicants for Diesel Opacity Inspectors

IV.B.1. Certificates of Qualification for Diesel Opacity Inspectors

IV.B.1.a. Applications for Certificates of Qualification for diesel opacity inspectors shall be filed with the Air Pollution Control Division, Colorado Department of Public Health and Environment, 2450 West Second Avenue, Denver, CO 80223, and the issuance of Certificates of Qualification shall be administered by the Division. Applications for such Certificates of Qualification shall be completed on

forms provided by the Division. Before an applicant may be given a Certificate of Qualification, he must comply with the requirements of this section. The Division will notify applicants of the evaluation requirements prior to testing.

- IV.B.2. An applicant must demonstrate knowledge, skill, and competence concerning the conduct of diesel opacity inspections. Such knowledge, skill and competence will be shown by passing a qualification test including, but not limited to, knowledge of the following:
 - IV.B.2.a. Knowledge of rules and regulations of Diesel Opacity Inspection Program procedures.
 - IV.B.2.b. Visual inspection procedures of the required emissions control equipment for 1991 and newer vehicles.
 - IV.B.2.c. Operation of and proper use, care, maintenance and calibration of the Commission – approved opacity meters, chassis dynamometers, photo tachometers and strip chart recorders.
 - IV.B.2.d. Proper use of and distribution of DVIR, Certificates of Emissions Control, opacity worksheets and supplemental documents.
 - IV.B.2.e. Waiver requirements for all diesel vehicles failing the initial emissions inspection.
- IV.B.3. For on-road heavy-duty diesel inspector licenses only, the applicant must possess a valid Colorado Class A operator's license.
- IV.B.4. The Division shall issue a Certificate of Qualification to an applicant upon successful completion of the requirements of this section.
- IV.B.5. **Requalification Requirements for all Diesel Opacity Inspectors**
 - IV.B.5.a. Upon the determination by the Commission of the necessity of technically updating the qualifications for diesel opacity inspectors and, upon development or approval of retraining courses and retesting requirements for diesel opacity inspectors to demonstrate said qualifications, diesel opacity inspectors, or holders of certificates of qualification, shall be required to requalify.
 - IV.B.5.b. Diesel Opacity Inspectors shall be required to requalify within ninety (90) days from the date of written notification by the Division. Said notice shall be mailed to the address of record in the office of the Department of Revenue (Department) charged with licensing of diesel opacity inspectors which notice shall inform the person of the necessity of requalification and the nature of such skills, systems, and procedures requiring the retraining for the continued performance of the opacity inspection. The notice shall give the name and location of training sources approved or accredited for purposes of retraining, the necessity of requalification by a certain date, and the nature and evidence of documentation to be filed with the Division evidencing such requalification, and state that failure to requalify within said period of time shall result in suspension or revocation of the diesel opacity inspector's license or certification as described in the Department's rules and regulations.

IV.B.5.c. The Division shall issue a Certificate of Requalification to any person who has requalified to the satisfaction of the Division and according to the requalification regulation of the Department.

IV.B.6. Transmittal of Certificates and Issuance of Diesel Opacity Inspector's Licenses

The Division shall provide a duplicate copy of any Certificate of Qualification to the opacity inspector authority of the Department of Revenue, and, upon application by any person so certified or recertified, the Department shall issue a diesel opacity inspectors license in accord with the regulations of that department.

IV.B.7. Lapse of Certificate of Qualification for Diesel Opacity Inspector

A person to whom the Division has issued a Certificate of Qualification, or Certificate of Requalification, who has not been issued a Diesel Opacity Inspector's license within six (6) months from the date of issuance of the most recently issued certificate shall be deemed to have forfeited the said certificate and shall be required to reapply if a new Certificate of Qualification is requested.

V. Opacity Standards for Diesel-Powered Motor Vehicles Subject to Part B of This Regulation

V.A. In order for a vehicle (owner) to obtain a valid Certification of Emissions Compliance, the exhaust opacity from the diesel-powered motor vehicle subject to the annual Diesel Opacity Inspection Program may not exceed the following maximum opacity level.

V.B. The smoke opacity standard for all naturally aspirated Light-duty diesel vehicles subject to opacity test under Part B of this regulation shall be forty percent (40%) opacity for (5) five seconds. The smoke opacity standard for turbocharged Light-duty vehicles shall be thirty-five percent (35%) for five (5) seconds.

For all Heavy-duty vehicles subject to opacity tests under Part B of this regulation, the opacity standards shall be thirty-five percent (35%) and twenty percent (20%) for naturally aspirated and turbocharged diesel vehicles respectively for five (5) seconds.

V.C. Peak opacity (snap/free acceleration) tests shall be a component of the Heavy-duty diesel vehicle tests and conducted following the procedures specified in Section III, Part B of this regulation, and recorded on the Opacity Inspection form, but no peak opacity standard shall apply.

V.D. Opacity Standards for Diesel Vehicles with Non-Original Engines (Engine Changes)

For those vehicles in which the original engine has been replaced, the opacity standards and applicable emissions control equipment for the year and model of the vehicle body/chassis, shall apply.

Those diesel-powered vehicles titled/registered as model year 1991 and newer, that were assembled by other than a licensed manufacturer such as a kit-car or truck glider kit, and registered/titled according to Section(s) 42-1-102 (45.5) and/or 42-12-203; or the applicable emissions control equipment will be based upon a determination by technical center personnel of the vintage of the vehicle engine. An affidavit may be issued by the technical center personnel and the year of the engine shall be presumed to be that stated by the vehicle owner unless it is determined by center personnel, after physical inspection of the vehicle engine, that the year of the engine is other than stated by the owner. The emissions standards for a vehicle of this classification will be determined by the model year of the vehicle as registered/titled.

PART C STANDARDS FOR VISIBLE POLLUTANTS FROM DIESEL ENGINE POWERED VEHICLES (Operating on Roads, Streets and Highways)

- I. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle of 14,000 pounds Gross Vehicle Weight Rating or less, any air contaminant, for a period greater than five (5) consecutive seconds, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 40% opacity.
- II. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle of more than 14,000 pounds Gross Vehicle Weight Rating/any air contaminant, for a period greater than five (5) consecutive seconds, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 35% opacity, with the exception of Subpart III or Subpart IV.
- III. No person shall emit or cause to be emitted into the atmosphere from any naturally aspirated (non-turbocharged) diesel-powered motor vehicle of more than 14,000 pounds Gross Vehicle Weight Rating/Gross Combination Weight, operated above 7,000 feet (mean sea level) any air contaminant for a period greater than five (5) consecutive seconds, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 40% opacity.
- IV. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle of more than 14,000 pounds Gross Vehicle Weight Rating any air contaminant which is of such a shade or density as to obscure an observer's vision to a degree in excess of 40% opacity when tested using an SAE J1667 Snap acceleration test procedure.
- V. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle under transient conditions, any air contaminant, for any period of time, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 60% opacity.
- VI. Any diesel-powered motor vehicle exceeding these requirements shall be exempt for a period of 10 minutes, if the emissions are a direct result of a cold engine start-up and provided the vehicle is in a stationary position.

These standards shall apply to motor vehicles intended, designed, and manufactured primarily for travel or use in transporting person, property, auxiliary equipment, and/or cargo over roads, streets, and highways.

Enforcement of these emission standards shall be by peace officers and environmental officers pursuant to the authority of 42-4-412, or 42-4-413 C.R.S., within program boundaries.

PART D STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

I. Amendment to Parts A and B, and Creation of this Part D

Adopted January 15, 1998

Basis and Purpose

Regulation Number12 establishes programs for Diesel Opacity Inspections and for Diesel Fleet Self-Certification. Both programs require annual emissions inspections for diesel vehicles covered by such programs. In 1997, the General Assembly revised §42-4-406 (1) (b) (II), C.R.S., to provide that new diesel vehicles do not need to be inspected until such vehicles are two years old, or upon a transfer of ownership. The revisions adopted on January 15, 1998 create such an exemption from inspection requirements for new diesel vehicles.

Federal Requirements

The Diesel Inspection Programs established in Regulation Number 12 are federally required because the State took emission reduction credit for such programs in the Denver element of the State Implementation Plan for particulate matter (Denver PM10 SIP). However, federal law does not expressly require the State to have opacity or emissions inspection programs for diesel vehicles and such programs are not required for areas outside of the Denver PM10 non-attainment area.

Federal law is entirely silent on the question of whether the creation of a two-year exemption from inspection requirements for new diesel vehicles will change the emissions reduction credit associated with such programs. Since federal law is silent on this issue, the Commission cannot determine whether federal law permits the State to create an exemption for such vehicles for more than the two years established by § 42-4-406 (1) (b) (II), C.R.S., or whether such exemption is not required by provisions of the Federal Act or is otherwise more stringent than requirements of the Federal Act. Nevertheless, the January 15, 1998 revisions should be submitted to EPA as a revision to the Denver PM10 SIP. The submission of this revision to EPA is required in order to give effect to § 42-4-406 (1) (b) (II) in federal law. Failure to include the January 15, 1998 revisions in the SIP would result in more stringent SIP provisions.

The Division intends to propose a revision to Regulation Number 12 to remove the Diesel Inspection Programs for Colorado Springs, Greeley, and Fort Collins from the SIP.

Statutory Authority

Specific statutory authority for the amendments is provided in §§ 42-4-403(1) and 42-4-406 (1) (b) (II).

Findings Pursuant to § 25-7-110.8

The January 15, 1998 rule revisions relax existing inspection requirements for diesel vehicles and are not intended to increase the effectiveness of the relevant programs in reducing air pollution. Furthermore, the Commission has no discretion under state law not to create such an exemption for new diesel vehicles. For these reasons the determinations enumerated in § 25-7-110.8 (1), C.R.S., do not apply.

II. Amendments to Parts B and D

Adopted January 11, 2001

Basis and Purpose

Regulation Number 12 establishes as a control strategy, the Diesel Opacity Inspection and the Diesel Fleet Self-Certification Programs. Both programs require periodic inspection of both light-duty and heavy-duty diesel powered vehicles. Emissions related repairs are required of those vehicles that do not comply with inspection requirements. The intended purpose of Regulation Number 12 is to reduce diesel vehicle emissions. The diesel inspection and maintenance (diesel I/M) program is one of the control measures relied on to demonstrate attainment of federal requirements in the Denver PM State Implementation Plan (SIP).

The rule revision implements the provisions of Section 42-4-408 (3), C.R.S. as amended pursuant to H.B. '00-1381. H.B. '00-1381 amends the inspection fee for diesel powered motor vehicles from a maximum of \$45 to a fee no greater than the posted hourly shop rate for one hour. The amendments to Section 42-4-408 (3) require inspection station personnel to notify diesel vehicle owner/operators of the fee, prior to conducting any element of the inspection.

The revisions to Regulation Number 12 correct a statutory reference which established inspection fees that resulted when Title 42 of the Colorado Revised Statutes was recodified.

Federal Requirements

The federal act and EPA requirements are silent to the issue of inspections fees, how fees may be structured and the posting of fees. The setting of a vehicle inspection fee or fees and the required posting of same are the prerogative of individual states. The fees specified and the manner, in which fees shall be posted, shall not be incorporated into the State Implementation Plan.

Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is Section 42-4-403, C.R.S.

Findings Pursuant to Section 25-7-110.8, C.R.S

The January 11, 2001 rule revisions do not increase or decrease the effectiveness of the Diesel Opacity Inspection Program in reducing diesel emissions. The rule revision results in Regulation Number 12 being consistent with Section 42-4-408 (3), C.R.S. as amended. For these reasons, the determinations enumerated in Section 25-7-110.8 (1), C.R.S. do not apply.

III. Amendments to Parts A, B, C, and, D

Adopted September 18, 2003

Basis and Purpose

Regulation Number 12 establishes as a control strategy, the Diesel Opacity Inspection and the Diesel Fleet Self-Certification Programs. Both programs require periodic inspection of both light-duty and heavy-duty diesel powered vehicles. Emissions related repairs are required of those vehicles that do not comply with inspection requirements. The intended purpose of Regulation Number 12 is to reduce diesel vehicle emissions. The diesel inspection and maintenance (diesel I/M) program is no longer an element of the State Implementation Plan, with the April 19, 2001 changes to the PM SIP, all elements of regulation 12 were removed from the SIP. The US EPA approved this SIP revision on September 16, 2002 and it became effective October 16, 2002.

The rule revision implements various provisions of Section 42-4-401 through 414 and 25-7-122 C.R.S. as amended pursuant to H.B. '03-1053, as follows:

- The distinction between light and Heavy-duty diesel vehicles is redefined,
- New Heavy-duty diesel vehicles become exempt from emissions testing for four years,
- The Heavy-duty diesel test cycle is extended to two years,
- Vehicles routinely operated in the program area are required to be tested,
- Allows the use of an automated snap-acceleration test procedure for fleets and for roadside enforcement,
- Eliminates visual opacity testing for fleets older than ten years,
- Allows the use of newer technology opacity meters,
- Obsolete and conforming changes are made, which changes are not substantive

The revised rule identifies the *J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-duty Powered Motor Vehicles*, © 1996 Society of Automotive Engineers Inc. (SAE) as the automated snap-acceleration test procedure that may be used for fleet inspections. The Commission adopted the SAE J1667 test procedures based on the authority set out in Section 42-4-414 (2) (b),

C.R.S., as revised by HB03-1053 allowing the use of an automated opacity metering protocol. The SAE J1667 test procedure is such an automated opacity metering protocol.

One participant stated that small operators tend to own older vehicles than large operators. Therefore, he noted that the mandatory use of an opacity meter for older fleet vehicles, but not for newer fleet vehicles, imposes a somewhat more onerous requirement on small operators. However, the requirement to use an opacity meter when testing older vehicles is set out in statute and the Commission does not have the authority to change that requirement. Section 42-4-414 (2) (b). Furthermore, the requirement for the use of an opacity meter on older, but not newer vehicles is justified because newer vehicles tend to be cleaner than older vehicles.

The Commission also readopted the rule in its entirety. Prior to HB03-1053, Section 42-4-414, C.R.S., vested rulemaking authority over the Diesel Fleet Self-Certification Program with the executive director of the department of public health and environment. The previous version of Part A, of Regulation Number 12 was adopted by the Commission pursuant to a delegation of authority from the executive director. HB03-1053 revised Section 42-4-414 to delegate such rulemaking authority to the Commission directly from the General Assembly. The Commission hereby readopts Regulation Number 12 in its entirety pursuant to the authority granted it by the General Assembly in Sections 42-4-403 and 42-4-414.

Federal Requirements

There are no federal laws or rules requiring the Diesel Fleet Self-Certification Program or the Diesel Opacity Inspection Program. Both programs have been removed from the state implementation plan. Both programs are established by state statute and exceed the minimum federal requirements.

Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

Findings Pursuant To § 25-7-110.8

The selection of the SAE J1667 test procedures as the automated opacity metering protocol approved by the Commission is based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed, and sound scientific methodologies and information made available by interested parties concerning the selection of an automated opacity metering protocol was considered. In fact, the J1667 test procedure was adopted, in part, due to suggestions from the diesel engine manufacturing sector over the years. The primary purpose of the adoption of the SAE J667 test procedure is to make diesel emissions test more convenient; it was not adopted to result in a demonstrable reduction in air pollution. To further enhance convenience and flexibility, the test is made optional for fleets. Fleets have the choice of continuing to use the lug-down tests already set out in the rule. For fleets, the test is optional. Thus, the adoption of the J1667 test procedures is administrative in nature. The optional nature of the J1667 test procedures makes the rule the most cost-effective alternative and will maximize the air quality benefits of Regulation Number 12 in the most cost-effective manner by giving the fleet's additional flexibility.

Most of the remaining rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S., because the changes were adopted to implement statutory provisions, rather than reduce air pollution. For the most part, the regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law. One area in which the Commission exercised discretion in a manner that may result in a reduction in air pollution concerns the definitions of the terms "principally operated" and "routinely operated". However, such definitions are administrative in nature and are also exempt from the requirements of Section 25-7-110.8, C.R.S. HB03-1053 expanded the scope of the programs to include vehicles "routinely operated in the program area or principally operated from a terminal, maintenance facility, branch, or division located within the program area", but

did not define these terms. The statutory requirement to include such vehicles in the programs cannot reasonably be administered without defining the terms. For guidance in defining the terms, the Commission turned to the 90-day rule established in Section 42-4-310 (1) (c), C.R.S., for motorists commuting into the AIR Program. Thus, such definitions are administrative, rather than scientific, in nature. The 90-day rule was chosen to implement the overall legislative intent, rather than to achieve a specific reduction in air pollution. For these reasons the determinations enumerated in § 25-7-110.8 (1), C.R.S., do not apply.

IV. Amendments to Parts A, B, and D

Adopted October 21, 2004

Basis and Purpose

The rule revision implements provisions of Section 42-4-406 (1)(b)(II) and 42-4-414 (2)(c) as amended pursuant to H.B. '04-1025, to remove the requirement of an emissions inspection upon change of ownership while the vehicle is still within its model year exemption, unless there is less than twelve months left on that exemption. The model year exemption for new light duty diesel vehicles is two years; and for new heavy-duty diesels the exemption period is four years.

Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

Findings pursuant to § 25-7-110.8

The rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S. because the changes were adopted to implement statutory provisions, rather than reduce air pollution. The regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law.

V. Amendments to Parts A, B, and D

Adopted March 18, 2005

Basis and Purpose

The Colorado Department of Public Health and Environment, Air Pollution Control Division proposes amendments to Air Quality Regulation Number 12: Reduction of Diesel Vehicle Emissions. The proposed amendments delete obsolete provisions and correct typographical and grammatical errors. The proposed revisions will have no regulatory impact on any person, facility, or activity.

The proposed amendments remove transitional provisions of the diesel emissions inspection programs within the Front Range. The transition process will be complete by December 31, 2004, rendering the transition provisions in the Regulation obsolete. Legislative Legal Services requested that the transition language be removed from the rule in order to avoid confusion and potential conflict with statute. In addition, date references that are in the past have been removed from the proposed rule.

Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

Findings pursuant to § 25-7-110.8

The rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S. because the changes were adopted to clarify and conform to existing statutory provisions, rather than reduce air pollution. The regulatory revisions remove references to obsolete provisions for diesel vehicles. The proposed revisions will have no regulatory impact on any person, facility, or activity.

VI. Amendments to Parts B and D

Adopted November 16, 2006

Basis and Purpose

Regulation Number 12 establishes as a control strategy, the Diesel Opacity Inspection and the Diesel Fleet Self-Certification Programs. Both programs require periodic inspection of both light-duty and heavy-duty diesel powered vehicles. Emissions related repairs are required of those vehicles that do not comply with inspection requirements. The intended purpose of Regulation Number 12 is to reduce diesel vehicle emissions.

The rule revision implements provisions of Section 42-4-406 C.R.S. as amended pursuant to S.B. 06-058, as follows:

- Light-duty diesel test cycles are extended to two years for models 10 years old or newer and model year 2004 and newer,
- Extend the light-duty model year exemption from two years to four years,
- Remove obsolescent language which changes are not substantive.

The changes were adopted to implement statutory changes and the Commission has no discretion but to adopt the provisions of S.B. 06-058. The rule provides regulatory relief and is not intended to reduce air pollution.

Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

Findings pursuant to § 25-7-110.8

The rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S. because the changes were adopted to implement statutory provisions and remove an obsolete provision rather than reduce air pollution. The regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law.

Further, these revisions will include any typographical and grammatical errors throughout the regulation.

VII. Amendments to Parts A, B, C and D

Adopted October 20, 2011

Basis and Purpose

The purpose of this rulemaking is to revise Regulation Number 12 to conform to provisions of House Bill 11-1157. House Bill 11-1157 permits heavy-duty vehicles that are registered in the Fleet Self-Certification Opacity Inspection Program area, but are physically based and principally operated outside of the

program area to forgo the periodic opacity testing requirements contained in Air Quality Control Commission Regulation Number 12 Part A.

It is projected by Air Pollution Control Division staff that the mandated changes to Regulation Number 12 will affect less than 100 vehicles and result in no additional cost to the program, or air quality benefits. As such, there is no cost/benefit to be derived from the mandated changes.

Federal Requirements

There are currently no federal requirements. Regulation No 12 regulates both the Fleet Self-Certification Opacity Testing Program (Regulation No 12, Part A), and the non fleet Diesel Opacity Inspection Program (Regulation Number 12, Part B). Both programs are aimed at improving air quality through reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles.

Specific Statutory Authority

Specific Statutory Authority for the revisions to Regulation Number 12, are contained in Sections 42-4-401 through 42-4-414, C.R.S., and specifically 42-4-414, C.R.S., for the Fleet Self-Certification Opacity Inspection Program.

Scientific/Technical Rationale

This rule is based on reasonably available validated, reviewed, and sound scientific methodologies.

Findings pursuant to Section 25-7-110.8

The rule revisions are exempt from the determinations required by Section 25-7-110.8 C.R.S. because the changes were adopted to implement statutory provisions rather than reduce air pollution. The regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

VIII. Amendments to Part A

Adopted August 15, 2013

Basis and Purpose

The purpose of this rulemaking is to revise Regulation Number 12 to adopt provisions contained in House Bill 13-1091. These revisions will permit qualified fleets to use “exemplary maintenance” as an alternative method to demonstrate compliance with opacity standards on vehicles ten years old or newer. Exemplary maintenance would be an optional choice, at the fleet’s own discretion.

Air Pollution Control Division staff project that exemplary maintenance practices that continuously monitor, maintain, and repair modern fleet diesel vehicles, will result in at least the same level of air quality improvement as the existing periodic opacity testing. Well maintained late model heavy-duty diesel vehicles are equipped with extensive exhaust aftertreatment equipment and sophisticated engine controls. Late model heavy trucks when properly maintained, simply do not smoke.

Federal Requirements

There are currently no federal requirements. Regulation No 12 regulates both the Fleet Self-Certification Opacity Testing Program (Regulation No 12, Part A), and the non fleet Diesel Opacity Inspection Program

(Regulation No. 12, Part B). Both programs are aimed at improving air quality through reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles or for the self-certification fleets, through the proposed exemplary maintenance practices.

Specific Statutory Authority

Specific Statutory Authority for the revisions to Regulation No. 12, are contained in Sections 42-4-401 through 42-4-414, C.R.S., and specifically 42-4-414, C.R.S., for the Fleet Self-Certification Opacity Inspection Program. The exemplary maintenance option is specifically permitted under C.R.S. 42-4-414(2)(a)(IV)(b.5), as amended by HB 13-1091.

Scientific/Technical Rational

This rule is based on reasonably available validated, reviewed, and sound scientific methodologies.

Findings pursuant to Section 25-7-110.8

Since fleets may use exemplary maintenance as an option to periodic opacity testing, and is voluntary on the fleet's part, there is no measureable economic impact from this proposed rule change. Fleets are able to either participate in this program or conduct their traditional opacity testing at their choice, depending on whichever is less expensive and/or that meets their fleet's requirements. Many fleets currently conduct their own exemplary maintenance practices that mirror the proposed requirements.

IX. Amendments to Parts A, B, C and D

Adopted August 18, 2016

Basis and Purpose

The purpose of this rulemaking is to: (1) revise Regulation Number 12 to make the current Diesel Fleet Self-Certification Opacity Program more convenient to operators of vehicles over 26,000 pounds gross vehicle weight (GVW); (2) allow law enforcement officers to enforce smoking vehicle statutes and regulations more consistently, and (3) make changes to data and secure document handling that will expedite on-line registration and renewal for diesel owners.

Pursuant to HB15-1134, this rulemaking revises the number of model year exemptions for heavy-duty diesel vehicles over 26,000 GVW from four to six years. The purpose of this increase in the model year exemption period is to lower the regulatory burden placed on Self-Certification Program Fleets and other operators of new technology heavy duty trucks, without lessening the overall air quality benefit of the program.

The rulemaking also establishes an on-road opacity standard with no time limit as the Commission requested at its January 21, 2016 meeting. This allows law enforcement officers to determine violations of opacity standards more consistently, without the need to determine opacity over a period of time. This is intended to allow law enforcement officers to better address vehicles emitting high amounts of smoke in short bursts. This will result in better enforcement of diesel vehicle tampering statutes.

Finally, the rulemaking automates data management and secures document handling that will permit Self-Certification Program fleets to renew their vehicle registrations on-line. On-line registration renewal will substantially increase fleet operator convenience. The proposed rule changes also adopt various housekeeping and wording changes that reflect advances in diesel technology, as well as clarifying existing inspection procedures.

Changes contained in this rule making will result in at least the same level of air quality improvement as the existing periodic opacity testing, at a reduced program cost to fleet operators along with increased

convenience to fleet operators. Greater smoking vehicle enforcement will also result in motorists being exposed to fewer heavily smoking diesel vehicles on the roadway.

Federal Requirements

There are currently no federal requirements for the Diesel Opacity Programs. The Diesel opacity programs are state-only programs.

Regulation No 12 regulates both the Fleet Self-Certification Opacity Testing Program (Regulation No 12, Part A), and the non-fleet Diesel Opacity Inspection Program (Regulation No. 12, Part B). Both programs are aimed at improving air quality through reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles.

Specific Statutory Authority

Specific statutory authority for the revisions to Regulation No. 12, are contained in sections 42-4-406(1)(b)(II)(C) and 42-4-414(2)(c), C.R.S., (as amended by HB15-1134 regarding model year exemptions); section 42-4-412(2)(a), C.R.S. (regarding on-road opacity standards); and section 42-4-403(1), C.R.S. (regarding changes to automate inspection data management and secure document handling).

Scientific/Technical Rationale

This rule is based on reasonably available, validated, reviewed, and sound scientific methodologies.

Findings pursuant to § 25-7-110.8, C.R.S.

- a. These revisions are based on sound science. A technical review of the Self-Certification Program was undertaken that utilized sound scientific principles.
- b. Evidence in the record demonstrates the rule change will result in demonstrable emission reductions. Extending the model year exemption to six years will result in a minimum loss of identified excessively smoking heavy-duty vehicles, estimated to be five vehicles. Air quality benefit is expected to be achieved through the identification and citation of diesel vehicles exhibiting high amounts of smoke in short bursts. This is expected to more than offset any air quality loss through extending model year exemptions to six years.
- c. Modifications to Regulation Number 12 will result in benefits to public health and to the environment. The proposed changes to Regulation Number 12 will result, as stated above, in a reduction in smoke and particulate emissions from smoking vehicles at a cost savings to government and regulated communities as determined through the economic cost analysis conducted.
- d. This action is cost effective and provides flexibility. A cost savings is realized for Industry while increasing flexibility for fleets in complying with program requirements for the diesel opacity programs.
- e. The rule change maximizes benefits to air quality in a cost-effective manner. The rule change increases air quality benefits of the diesel opacity programs, while reducing program costs.

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Tracking number: 2016-00245

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 08/18/2016

5 CCR 1001-15

REGULATION NUMBER 12 REDUCTION OF DIESEL VEHICLE EMISSIONS

The above-referenced rules were submitted to this office on 08/19/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 06, 2016 10:54:41

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Oil and Public Safety

CCR number

7 CCR 1101-14

Rule title

7 CCR 1101-14 UNDERGROUND STORAGE TANKS AND ABOVEGROUND
STORAGE TANKS 1 - eff 01/01/2017

Effective date

01/01/2017

**COLORADO DEPARTMENT OF
LABOR AND EMPLOYMENT**

DIVISION OF OIL AND PUBLIC SAFETY

STORAGE TANK REGULATIONS

7 C.C.R. 1101-14

Effective: January 1, 2017



**STORAGE TANK REGULATIONS
COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF OIL AND PUBLIC SAFETY**

(Found at 7 C.C.R. 1101-14)

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ARTICLE 1 GENERAL PROVISIONS

Section 1-1 Statement of Basis and Purpose

These regulations are promulgated to establish rules for the design, installation, registration, construction, and operation of storage tanks used to store regulated substances (including petroleum), response to releases of regulated substances from these tanks, and to describe the financial responsibility of storage tank owner/operators. The main purpose of these regulations is to reduce damage to the environment and risk to the public caused by leaking petroleum storage tanks and to mitigate such damage effectively when it occurs.

These regulations do not apply to material classified as hazardous wastes under Subtitle C of the U.S. Solid Waste Disposal Act.

The amendment to Article 9 of these regulations is developed pursuant to the Colorado Revised Statutes 8-20.5-103(9) that created the Petroleum Cleanup and Redevelopment Fund. The rules are designed to establish the implementation and operational guidelines of this fund.

Section 1-2 Technical Rationale

The technical requirements of these regulations are supported by many studies made by petroleum industry associations, the National Fire Protection Association (NFPA), the American Society of Testing and Materials (ASTM), and by or at the behest of the U.S. Environmental Protection Agency (EPA). The requirements represent the consensus of informed persons with regard to the best methods for reducing the hazards posed by storage tanks to acceptable levels.

Section 1-3 Statutory Authority

The amendments to these regulations have been created pursuant to Title 8 Article 20 Section 102 and Article 20.5 Sections 202 and 302 of the Colorado Revised Statutes (C.R.S.). The design, construction, location, installation, and operation of liquid fuel systems and equipment and the handling of liquid fuels shall conform to the minimum standards as prescribed by the applicable sections of NFPA 30.

Section 1-4 Effective Date

These amended rules shall be effective on January 1, 2017. The prior editions of the combined UST/AST regulations were published October 15, 2014, January 1, 2014, May 1, 2013, April 14, 2011, January 1, 2009, August 1, 2008, April 30, 2006, May 30, 2005, August 1, 2004, August 1, 2002, February 1, 1999, and January 1, 1997. Prior editions of the UST rules were published effective September 30, 1995 and December 1, 1989. Prior editions of the AST rules were published effective September 30, 1995 and October 1, 1994. A prior edition of the Emission Inspection rules was published effective January 1, 1990.

Section 1-5 Definitions

Terms in these regulations shall have the same definitions as those found in Articles 20 and 20.5 of Title 8 of the Colorado Revised Statutes. In addition, unless the context otherwise requires:

"Abandoned tank" means an underground or aboveground petroleum storage tank that the current tank owner or operator or current property owner did not install, has never operated or leased to another for operation, and had no reason to know was present on the site at the time of site acquisition.

"Aboveground storage tank" (AST) means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, constructed of non-earthen materials, including but not limited to concrete, steel, or plastic, which provide structural support, used to contain or dispense fuel products and the volume of which, including the pipes

connected thereto, is ninety percent or more above the surface of the ground, is not permanently closed, and except those exempted in statute and these regulations.

"Aboveground storage tank (AST) system" means all ASTs at a facility, all the connected piping and ancillary equipment, all loading facilities, and all containment systems if applicable.

"Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"ASTM International (ASTM)" means an international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge.

"Atmospheric tank" is a storage tank that has been designed to operate at pressures from atmospheric through 0.5 psig (760 mm Hg through 780 mm Hg) measured at the top of the tank.

"Bodily injury" shall have the meaning given to this term by applicable Colorado state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Bulk plant" is that portion of a property where liquids are received by tank vessel, pipelines, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank or container. [Note: A bulk plant is normally a wholesale fuel facility where petroleum products are stored prior to resale or redistribution.]

"Calendar days" means consecutive days including weekends and nationally recognized holidays.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, an UST or AST system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and UST and AST systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and UST and AST systems.

"Certificate of conformance" means a document issued by the national type evaluation program constituting evidence of conformance of a weighing and measuring device with the requirements of National Institute of Standards and Technology (NIST) Handbook 44.

"Certificate of Eligibility" is a document that entitles the bearer to participate in the Fund without further determination of compliance by the Director, if that bearer is a mortgagee who has acquired, by foreclosure or receipt of a deed in lieu of foreclosure, property on which the petroleum storage tanks covered by the certificate are located.

"CFR" Code of Federal Regulations is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government

"Change in service" means continued use of an UST or AST to store a non-regulated substance.

"Chemicals of concern" (COCs) are chemical compounds that have been identified for evaluation due to specific risks to human health and/or the environment.

"Committee" means the Petroleum Storage Tank Committee created in C.R.S. § 8-20.5-104.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered.

"Connected piping" means all piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual AST or UST system, the piping that joins two systems should be allocated equally between them.

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Contamination" means the presence of a regulated substance at or below ground that originated from a regulated storage tank system.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the system (e.g., tank from piping).

"Dispenser" means equipment that dispenses regulated substances from the storage tank system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the storage tank system.

"Director" means the Director of the Division of Oil and Public Safety of the Colorado Department of Labor and Employment or any designees thereof which may include certain employees of the Division of Oil and Public Safety of the Colorado Department of Labor and Employment or other persons.

"Downgradient" is in the direction of maximum decreasing static head.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Electrolyte" means the soil or liquid adjacent to and in contact with the systems, including the moisture and other chemicals contained in it; the electrically conductive material between the tank and its environment;

"Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure pathway" is the course that a chemical of concern takes from a source area to a point of exposure. An exposure pathway describes a unique mechanism by which a person or sensitive environment is assumed to be exposed to a chemical of concern. Each exposure pathway

includes a source, an exposure route, and a point of exposure. If the exposure point differs from the source, transport or exposure media (e.g., air, water, dust) are also included. All exposure pathways are assumed to be complete unless an exposure pathway elimination criteria is demonstrated. Exposure pathway elimination criteria are listed in the Owner/Operator Guidance Document.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Financial reporting year" means the latest consecutive twelve-month period for which any report used to support a financial test is prepared. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Fire resistant tank" is an atmospheric single or double walled AST with thermal insulation that has been evaluated for resistance to physical damage and for limiting the heat transferred to the primary tank when exposed to a hydrocarbon pool fire, and is listed in accordance with UL 2080 or an equivalent test procedure, and meets the additional requirements of NFPA.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Fund" means the Petroleum Storage Tank Fund created in C.R.S. § 8-20.5-103.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Good Engineering Practice", "Good Engineering Standards", and "Nationally Recognized Standard" means in accordance with standards developed by nationally recognized laboratories or associations such as: Underwriters Laboratory (U.L.), American National Standards Institute (ANSI), American Petroleum Institute (API), American Society for Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), Steel Tank Institute (STI), National Association of Corrosion Engineers (NACE), or the National Fire Protection Association (NFPA).

"Hazardous substance UST system" means an UST system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic conductivity" is the coefficient of proportionality describing the rate at which water can move through a permeable medium.

"Hydraulic gradient" is the slope of the water table in the direction of groundwater flow. This slope is typically expressed as a unit change in water table elevation per unit horizontal distance (e.g. ft/ft).

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Imminent threat to human health or safety or the environment" means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health or safety or the environment.

"Installation of a new motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the system. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the tank system. For purposes of these rules, the equipment necessary to connect the motor fuel dispenser to the tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

"Insurer" or "qualified insurer" means an insurer or group that is authorized to transact the business of insurance or authorized to provide insurance as an excess or surplus lines insurer in Colorado.

"Light non-aqueous phase liquid" (LNAPL) refers to a regulated substance that is present in soil and on groundwater as a non-aqueous phase liquid (e.g., liquid not dissolved in water.)

"Liquid" is any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D 5, Test for Penetration for Bituminous Materials. When not otherwise identified, the term "liquid" shall mean both flammable and combustible liquids.

[Note 1: Class I flammable liquids include all grades of Gasoline, and most motor fuels blended using alcohol and MTBE (methyl-tertiary-butyl-ether).]

[Note 2: Class II combustible liquids include #1 and #2 Diesel Fuels, #1 and #2 Heating Oil, Kerosene, and Jet-A grade Jet fuel.]

[Note 3: Class III combustible liquids include most Lubricating Oils, and Heavy Fuel oils.]

"Liquid, combustible" is a liquid having a flash point at or above 100°F (37.8°C). Combustible Liquids are classified as follows:

- (1) CLASS II liquids have a flash point at or above 100°F (37.8°C) and below 140°F (60°C).
- (2) CLASS IIIA liquids have a flash point at or above 140°F (60°C) and below 200°F (93°C).
- (3) CLASS IIIB liquids have a flash point at or above 200°F (93°C).

"Liquid, flammable" is a liquid having a flash point below 100°F (37.8°C) and having a Reid vapor pressure not exceeding 40 psia (2068 mmHg) at 100°F (37.8°C). Flammable Liquids are classified as Class I liquids. Class I liquids are further subclassified as follows:

- (1) CLASS IA liquids have a flash point below 73°F (22.8°C) and a boiling point below 100°F (37.8 ° C).
- (2) CLASS IB liquids have a flash point below 73°F (22.8°C) and a boiling point at or above 100°F (37.8°C).
- (3) CLASS IC liquids have a flash point at or above 73°F (22.8°C) and below 100°F (37.8°C).

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Marine service station" is that portion of a property where liquids used as fuels are stored and dispensed from fixed equipment on shore, piers, wharves, or floating docks into the fuel tanks of self-propelled craft, including all facilities used in connection therewith.

"Media" are intervening substances through which something is transmitted or carried (e.g. soil, water, or air).

"Mortgagee" refers to a mortgagee or the holder of an evidence of debt secured by a mortgage or deed of trust.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, fuel products as defined in C.R.S. § 8-20.5-101(6), or any grade of gasohol, and is typically used in the operation of a motor engine.

"Motor fuel dispensing facility" means that portion of a property where motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles or marine craft or into approved containers, including all equipment used in connection therewith.

- (a) "Fleet vehicle motor fuel dispensing facility" means a motor fuel dispensing facility at a commercial, industrial, governmental, or manufacturing property where motor fuels are dispensed into the fuel tanks of motor vehicles that are used in connection with the business or operation of that property by persons within the employ of such business or operation.

"Net worth" means the assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing economic benefits obtained or controlled by an owner/operator.

"Noncommercial purposes" with respect to motor fuel at farms and residences means not for resale.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed.

"Operator" means any person in control of, or having responsibility for the operation of an underground or above ground storage tank system.

"Orphaned tank" means an underground storage tank which is owned or operated by an unidentified owner or no longer in use and was not closed and the property has changed ownership prior to December 22, 1988, and such property is no longer used to dispense fuels.

"Out of service" means that the tank is not being operated in accordance with its intended purpose.

"Overfill" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

- (1) In the case of an underground storage tank in use on or after November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;
- (2) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on or after November 8, 1984, any person who owned such tank immediately before the discontinuation of its use; or
- (3) Any person who owns an aboveground storage tank.
- (4) Regarding reporting and responding to releases of regulated substances, Owner means the person who owned the tank system at the time of the release. The term "owner" does not

include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located.

"Owner(s)/operator(s)" means that the task to which this phrase is attached may be performed by either the owner or the operator. If neither the owner nor the operator performs the task, both shall be in violation of these regulations. Duplication of the task is not required.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Petroleum" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials and in accordance with NFPA or other nationally recognized piping standards for petroleum storage tanks. Piping routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines not connected to remote fills.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Point of exposure " (POE) is the location at which a person or sensitive environment is assumed to be exposed to a chemical of concern. POEs for benzene, toluene, ethyl benzene and xylenes are: property boundaries, surficial soils, subsurface utilities, structures, groundwater wells, surface water, and sensitive environments. POEs for MTBE are: water supply wells that are used for human consumption and surface water features that are used for human consumption.

"Product deliverer" means any person who delivers or deposits product into an UST. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

"Property damage" shall have the meaning given this term by applicable Colorado laws. This term shall not include those liabilities, which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks, which are covered by the policy.

"Protected tank" is an atmospheric AST with integral secondary containment and thermal insulation that has been evaluated for resistance to physical damage and for limiting the heat transferred to the primary tank when exposed to a hydrocarbon pool fire and is listed in accordance with ANSI/UL 2085 or an equivalent test procedure, and meets the additional requirements of NFPA.

"Provider of financial assurance" means an entity that provides financial assurance to an owner/operator of an UST through one of the mechanisms listed below, including but not limited to an insurer, issuer of a letter of credit, or the trustee of a trust fund.

"Red Tag" means a tag, device, or mechanism on the tank's fill pipes that clearly identifies an UST as ineligible for product delivery. The tag or device is easily visible to the product deliverer and clearly states and conveys that it is unlawful to deliver to, deposit into, or accept product into the ineligible UST. The tag, device, or mechanism is generally tamper resistant.

"Reimbursement" means an assignment of money from the Fund to reimburse a person for approved costs incurred in remediating petroleum contamination.

"Registered Service Agency (RSA)" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device and that voluntarily registers with the division. Under agency registration, identification of individual servicepersons shall be required.

"Regulated substance" for UST systems has the same meaning as in C.R.S. § 8-20.5-101(13) as follows:

- (1) Any substance defined in Section 101 (14) of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, but not including any substance regulated as a hazardous waste under subtitle (C) of Title II of the federal "Resource Conservation and Recovery Act of 1976", as amended.
- (2) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).
- (3) Alternative fuel
- (4) Renewable fuel

"Regulated substance" for AST systems means regulated fuel products as defined in C.R.S. § 8-20.5-101(6), including alternative fuels and renewable fuels as defined in CRS 8-20.5-101(2.5) and (14.5) as follows:

- (1) All gasoline, aviation gasoline, diesel, aviation turbine fuel, jet fuel, fuel oil, biodiesel, biodiesel blends, kerosene, all alcohol blended fuels, gas or gaseous compounds, and other volatile, flammable, or combustible liquids, produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning or for any other similar usage.
- (2) Alternative fuel
- (3) Renewable fuel

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance from a regulated tank system into the environment.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST or AST system into the environment or a leak has occurred into the interstitial space between the UST or AST system and its secondary barrier or secondary containment around it.

"Remediation" means actions taken to reduce concentrations of chemicals of concern (including natural attenuation), or prevent migration of chemicals of concern to POEs. Remediation shall be implemented for sites where no further action is not appropriate.

"Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other system component that has caused a release of product from an AST or UST system or has failed to function properly.

"Replace" This term applies to underground storage tanks and piping.

For underground storage tanks – Replace means to remove an existing underground storage tank and install a new underground storage tank.

For underground piping – Replace means to remove and put back in any amount of piping connected to a tank system. The secondary containment requirements for replaced piping are triggered when a minimum of 50% or 50 feet (whichever is less) of the total length of piping connected to a single tank is replaced. The total length of piping connected to a single tank includes the length piping from that tank to the farthest connected dispenser, including piping runs between dispensers connected to that tank.

"Reportable quantity" means quantities of a released regulated substance which equal or exceed the reportable quantity under the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, and petroleum products in quantities of twenty-five gallons or more.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retail motor fuel device" (RMFD) means a device designed for the measurement and delivery of liquid fuel products for internal-combustion engines. The term "motor-fuel dispenser" means the same as "motor-fuel device".

"Risk-based corrective action (RBCA)" means a consistent decision making process for the assessment and response to a petroleum release, based on the protection of human health and the environment according to ASTM 1739.

"Secondary containment" This term applies to AST and UST Systems

For AST systems secondary containment is containment which prevents any release from an AST system from reaching land or waters outside of the containment area, and can include remote impounding, diking, or different types of AST construction. Where underground piping is connected to an AST, the definition of "secondary containment" for UST systems also applies to the piping.

For UST systems secondary containment is a release prevention and release detection system for an underground tank and/or piping. The release prevention part of secondary containment is an underground tank and/or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping (called interstitial monitoring). This term includes containment sumps when used for interstitial monitoring of piping.

"Secondary containment tank" is a shop fabricated AST which includes a steel or reinforced concrete secondary shell that will provide containment of the entire capacity of the inner tank in case of leaks or ruptures of the inner tank and having means for monitoring the interstitial space for a leak.

"Sensitive environment" is an area of particular environmental value where regulated petroleum contamination could pose a greater threat than in other less sensitive areas. Sensitive environments include: critical habitat for federally endangered or threatened species, national parks, national monuments, national recreation areas, national wildlife refuges; national forests, campgrounds; recreational areas, game management areas, wildlife management areas, designated federal wilderness areas, wetlands, wild and scenic rivers, state parks, state wildlife refuges, habitat designated for state endangered species, fishery resources, state designated natural areas, wellhead protection areas, classified groundwater areas, and county or municipal parks.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer where the effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Service station" is a place where motor fuels are sold to the general public for cash or credit and are dispensed into the fuel tanks of motor vehicles or approved containers. This does not include unattended cardlock system facilities at bulk plants which only use proprietary cards specific to the cardlock system in question.

"Significant violation" means the failure of a person to comply with any requirement of Article 2 of 7 C.C.R. 1101-14, which includes any of the following:

- (a) A violation that is causing, or threatens to cause a liquid release of a regulated substance from an UST system, including, but not limited to: the failure of any required overfill prevention system, where the failure is causing or threatens to cause a release; or the failure of a required spill containment structure, where the failure is causing or threatens to cause a release to the environment due to a spill or an overfill.
- (b) A violation that impairs the ability of an UST system to detect a liquid leak or contain a liquid release of a regulated substance in the manner required by law, including, but not limited to: tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.
- (c) A chronic violation or a violation that is committed by a recalcitrant violator.

"Site check" means collecting soil and/or groundwater samples for laboratory analysis from locations most likely to demonstrate the presence of a release from a regulated storage tank system.

"Site classification" is a qualitative evaluation of a site based on known or readily available information to identify the need for interim remedial actions and further information gathering.

"Source concentration" is the highest concentration, in soil and/or groundwater and /or vapor, of the chemicals of concern.

"State inspector" is a person who is employed or authorized by the division to perform inspections of facilities storing regulated substances.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Subsurface soils" are all soils located at a depth of greater than one meter below the ground surface.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Surficial soils" are all soils located from the ground surface to a depth of one meter below ground surface.

"System test" means a test of tank system components, including any associated delivery piping, secondary containment or spill control component, to identify releases of regulated substances.

"Temporary closure" means a period of time that a storage tank is empty but is not permanently closed or has not changed service to store a non-regulated substance. This term does not apply when a tank system is emptied for repair.

"Tier I risk-based screening levels (RBSLs)" are the default maximum concentrations for COCs used to determine whether remediation (cleanup) is required.

"Tier II site-specific target level(s) (SSTLs)" are the risk-based remedial action target levels for COCs developed for a particular site using site-specific geological and hydrogeological data in a predictive model.

"Tier III closure criteria" establishes conditions where all exposure pathways have been eliminated, even though dissolved-phase COCs remain above Tier I RBSLs beyond the release property boundary and beneath, but not beyond the adjoining public roadway.

"Tier IV closure criteria" establishes conditions where all exposure pathways have been eliminated, even though dissolved-phase COCs remain above Tier I RBSLs beyond the release property boundary irrespective of land use and where no storage tanks remain on the release property.

"Training program" means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C operator through testing, practical demonstration, or another approach acceptable to the implementing agency regarding requirements for UST systems that meet the requirements of Section 2-3-1.

"Transportation-related facilities" as used in these regulations means facilities where all ASTs with capacities from 660 to 39,999 gallons are regulated by the USDOT.

"Trustee" is a member of a Trust that is an applicant to the Fund. A trustee can be an individual or a company that acts on behalf of the Trust.

"Ullage" is the portion of a storage tank that does not contain liquid.

"Unattended cardlock system" is a vehicle fueling facility, which uses a mechanical or electronic method of tracking fuel deliveries using an identification card.

"Under-dispenser containment (UDC)" means containment underneath a dispenser that will prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

"Underground storage tank" (UST) means any one or combination of tanks, including underground pipes connected thereto, except those exempted in statute and these regulations, that is used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground and is not permanently closed.

"Underground storage tank (UST) system" refers to an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Upgrade" means the addition or retrofit of some systems (such as cathodic protection, lining, modification of the system piping, or spill and overfill controls, etc.) to improve the ability of an UST or AST system to prevent the release of product.

"Vault" means an enclosure (other than a secondary containment tank), either above or below-grade, that completely encloses an AST.

"Wastewater treatment tank" means a tank that is designed to receive and treat influent wastewater through physical, chemical, or biological methods.

"Working days" consecutive days excluding weekends and nationally recognized holidays.

Section 1-6 Glossary of Acronyms and Initializations

ANSI	American National Standards Institute	NFPA	National Fire Protection Association
API	American Petroleum Institute	NIOSH	National Institute of Occupational Safety and Health
AST	Aboveground storage tank	NIST	National Institute of Standards and Technology
ASTM	ASTM International	NTEP	National Type Evaluation Program
BTEX	Benzene, Toluene, Ethyl Benzene, Xylene	OPS	Division of Oil and Public Safety
CAP	Corrective Action Plan	PAH	Poly-aromatic hydrocarbons
CC	Certificate of Conformance	PP	Pressurized piping
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	Psig	Pounds per square inch gauge
CFR	Code of Federal Regulations	PSTF	Petroleum Storage Tank Fund
COC	Chemicals of concern	RBCA	Risk-based corrective actions
C.R.S.	Colorado Revised Statutes	RBSL	Risk-based screening level
EPA	United States Environmental Protection Agency	RMFD	Retail Motor Fuel Dispenser/Device
FRP	Fiberglass reinforced plastic	RD	Release Detection
FR	Financial responsibility	SCR	Site Characterization Report
ICC	International Code Council	SIR	Statistical Inventory Reconciliation
IRA	Initial Risk Assessment	SPCC	Spill Prevention, Control, and Countermeasure
LNAPL	Light Non-Aqueous Phase Liquid	SSTL	Site Specific Target Level
LPG	Liquid petroleum gas	STP	Submersible Turbine Pump
MRR	Monitoring and Remediation Report	TPH	Total Petroleum hydrocarbons
MTBE	Methyl-tertiary-butyl-ether	VP	Vapor Pressure
NACE	National Association of Corrosion Engineers	UDC	Under Dispenser Containment
NFA	No further action	UL	Underwriters Laboratories/Underwriters Laboratories of Canada
NFAR	No Further Action Report	UST	Underground storage tank

Section 1-7 Codes, Documents or Standards incorporated by reference

The following codes, documents or standards are incorporated by reference:

American National Standards Institute (ANSI)

Standard B31, American National Standard Code for Pressure Piping, published October 14, 2003.

Standard B31.3, Petroleum Refinery Piping, published February 14, 2002.

Standard B31.4, Liquid Petroleum Transportation Piping System, published August 5, 2002.

American Petroleum Institute (API)

Recommended Practice 1604, Removal and Disposal of Used Underground Petroleum Storage Tanks, published November 2001.

Publication 650, Welded Steel Tanks for Oil Storage, 11th Edition

Publication 1615, Installation of Underground Petroleum Storage Systems, published November 2001.

Publication 1621, Recommended Practice for Bulk Liquid Stock Control at Retail Outlets, published 1993.

Publication 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations, published January 18, 2000.

Publication 1627, Storage and Handling of Gasoline-Methanol/Co-solvent Blends at Distribution Terminals and Service Stations, published January 18, 2000.

Publication 1631, Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks, published June 2001.

Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, published June 2002.

Publication 2015, Cleaning Petroleum Storage Tanks, published August 2001.

Publication 2015A, Lead Hazard Associated with Tank Entry, published 1982.

Publication 2015B, Cleaning Open Top and Floating Roof Tanks, published August, 1981.

Publication 2200, Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, published May 1999.

Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction

Standard No. 2000, Venting Atmospheric and Low-Pressure Storage Tanks

American Society of Testing and Materials (ASTM)

Standard D5, Test for Penetration for Bituminous Materials, published June 1, 2005.

Standard D4021-86, Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks, published June 15, 1992.

Standard D4814-16a, Standard Specification for Automotive Spark-Ignition Engine Fuel, published February 2016.

Association for Composite Tanks (ACT)

ACT-100, Specification for the Fabrication of FRP Clad Underground Storage Tanks, published 1989.

Environmental Protection Agency (EPA)

EPA Form 50 FR 46602, published November 8, 1985

Hazardous and Solid Waste Amendments of 1984, Public Law 98-616

National Association of Corrosion Engineers (NACE)

Standard RP-01-69, Control of External Corrosion on Submerged Metallic Piping Systems, published April 11, 2002.

Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems, published April 6, 2002.

National Fire Protection Association (NFPA)

Publication NFPA 30, Flammable and Combustible Liquids Code, 2008 Edition.

Publication NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2008 Edition.

Publication NFPA 70, National Electrical Code, published August 18, 2005.

Publication NFPA 80, Standard for Fire Doors and Fire Windows, published 1999.

Publication NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, published January 2, 2003.

Publication NFPA 91, Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying, published August 4, 2004.

Publication NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, published 1990.

National Institute for Occupational Safety and Health (NIOSH)

Criteria for a Recommended Standard, Working in Confined Spaces, DHHS (NIOSH) Publication No.80-106, December 1979.

National Institute of Standards and Technology

NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", published 2012

NIST Handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality", published 2012

National Leak Prevention Association (NLPA)

National Leak Prevention Association Standard 631, Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection, published 1991.

Petroleum Equipment Institute (PEI)

Publication RP100, Recommended Practices for Installation of Underground Liquid Storage Systems, published 2005.

Steel Tank Institute (STI)

Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks, published July 2005.

SP001, Standard for the Inspection of Aboveground Storage Tanks, 5th Edition

Underwriters Laboratories/Underwriters Laboratories of Canada (UL)

Subject 971, UL Listed Non-Metal Pipe, published January 2, 2004.

Standard 58, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, published July 27, 1998.

Standard 567, Pipe Connectors for Flammable and Combustible and LP Gas, published October 22, 2004.

Standard 1316, Standard for Glass- Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, published April 2, 1996.

Standard 1746, Corrosion Protection Systems for Underground Storage Tanks, published February 8, 2002.

CAN4-S603-M85, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, published 2000.

CAN4-S603.1-M85, Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids, November 2003.

CAN4-S615-M83, Standard for Reinforced Plastic Underground Tanks for Petroleum Products, published 1998.

CAN4-S631-M84, Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems, published 1998.

CAN4-S633-M81, Flexible Underground Hose Connectors, published August 1999.

Guide ULC-107, Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids, published 1993.

Section 1-8 Inspection of incorporated codes

Interested parties may inspect the referenced incorporated materials by contacting the Director.

Section 1-9 Later amendments not included

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

ARTICLE 1.5 MOTOR FUEL DISPENSING AND PRODUCT QUALITY

The method of sale and quality of motor fuels are regulated by the Director to ensure consumer protection and equity in the marketplace. This article lists the minimum specifications and tolerances for dispensing equipment and motor fuel quality to ensure compliance with Colorado statutes and adopted codes and standards. Further description of these requirements can be found in guidance documents, policies and procedures provided by the Director.

Section 1.5-1 Applicability

- (a) The requirements of Sections 1.5-2 and 1.5-3 shall apply to dispensers and product quality at retail facilities.
- (b) All retail and non-retail motor fuel dispensers must comply with the minimum standards as prescribed by the applicable sections of National Fire Protection Association (NFPA) 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages".

Section 1.5-2 Retail Motor Fuel Dispensers Inspection and Testing

- (a) All retail motor fuel dispensers (RMFD) shall be suitable for their intended use, properly installed, and accurate, and shall be maintained in that condition by their owner/operator.
- (b) All RMFDs shall have an active National Type Evaluation Program (NTEP) Certificate of Conformance (CC) prior to its installation or use for commercial purposes.
- (c) The division shall be notified when any new or remanufactured RMFD is placed in service at a new or existing installation.
 - (1) Notification shall be submitted using a placed in service report provided by the division.
- (d) No owner/operator of any RMFD shall use the RMFD for the measurement of liquid fuel products unless it has been proved in a manner acceptable to the Director and sealed as correct by a state inspector or registered service agency.
- (e) If any RMFD fails to comply with any of the provisions of this regulation, a state inspector shall seal it in such a manner as to prohibit its use, and it shall remain sealed until it complies with all of the provisions of this regulation.
 - (1) When an RMFD is brought back into compliance with this regulation it must be placed back in service by a state inspector or registered service agency.
- (f) All RMFDs shall comply with the minimum standards as prescribed by the applicable sections of NFPA 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages", NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices," NIST Handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality" except as modified or rejected by this regulation or by the Director.
- (g) All RMFDs shall be labeled in accordance with the minimum standards as prescribed by the applicable sections of NFPA 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages" and NIST Handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality", United States Environmental Protection Agency regulations, and Colorado Statutes, except as modified or rejected by this regulation or by the director.

Section 1.5-3 Product Quality

- (a) All liquid fuel products in Classes I, II, and III shall comply with the applicable specifications of ASTM, which are found in Section 5 of that organization's publication "Petroleum Products, Lubricants, and Fossil Fuels" (ASTM 4814).

[Note 1: Class I flammable liquids include all grades of gasoline, and most motor fuels blended using alcohol and MTBE (methyl-tertiary-butyl-ether).]

[Note 2: Class II combustible liquids include #1 and #2 diesel fuels, #1 and #2 heating oil, kerosene, and Jet-A grade jet fuel.]

[Note 3: Class III combustible liquids include most lubricating oils and heavy fuel oils.]

- (b) If gasoline is blended with ethanol, the ASTM D 4814 specifications shall apply to the base gasoline prior to blending. Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard, except that, if the ethanol is blended at nine percent or higher but not exceeding ten percent, the blend may exceed the ASTM D 4814 vapor pressure standard by no more than 1.0 PSI.
- (c) In addition to the above, all liquid fuel products shall comply with the requirements published in the NIST Handbook 130 "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality" except as modified or rejected by this regulation.
- (d) The allowable reductions in vehicle antiknock requirements for altitude are 4.5 for less than 89 Antiknock Index (AKI), and 3.0 for greater than 89 AKI. Fuel may be marketed using these reductions, but actual AKI minimum must be posted.

ARTICLE 2 UNDERGROUND STORAGE TANKS

Section 2-1 UST Program Scope and Applicability

UST systems in Colorado are regulated to protect the people and environment of Colorado from the potentially harmful effects of the regulated substances contained within UST systems. The purpose of this article is to present to owner/operators of UST systems a description of the minimum general standards for design, construction, installation and operation of these systems to be in compliance with these regulations and Colorado statutes. Further description of these requirements can be found in guidance documents, policies and procedures provided by the Director.

2-1-1 Applicability

(a) Regulated UST systems

These UST regulations apply to all owners/operators of an UST system except as otherwise provided in paragraphs (b), (c), and (d) of this section.

(1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this section as follows:

(i) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in Section 2.5 (UST Systems with Field Constructed Tanks and Airport Hydrant Distribution Systems).

(ii) UST systems that store fuel solely for use by emergency power generators installed on or before January 1, 2017 must meet the release detection requirements of §2.3.4 on or before January 1, 2020.

[Note: UST systems storing fuel solely for use by emergency power generators that existed on or before January 1, 2017 were already required to meet all other applicable requirements of this article.]

(iii) UST systems that store fuel solely for use by emergency power generators installed after January 1, 2017 must meet all applicable requirements of this section at installation

(2) Any UST system listed in paragraph (c) of this section must meet the requirements of Section 2-1-1-(d) (Installation Requirements for Partially Excluded UST Systems).

(b) Excluded UST Systems

The following UST systems or installations are excluded from these UST regulations:

- (1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
- (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;
- (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
- (4) Any UST system whose capacity is 110 gallons or less;
- (5) Any UST system that contains a de minimis concentration of regulated substances;

- (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use;
- (7) Any farm or residential UST with a capacity of 1,100 gallons or less that is used for storing motor fuel for non-commercial purposes;
- (8) Any tank used for storing heating oil for consumptive use on the premises where it is located;
- (9) Any septic tank;
- (10) Any pipeline facility, including its gathering lines, which is regulated under chapter 601 of Title 49 U.S.C., or which is an intrastate pipeline facility regulated under state laws as provided in chapter 601 of Title 49 U.S.C. and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
- (11) Any surface impoundment, pit, pond, lagoon, or landfill;
- (12) Any storm-water or Wastewater collection system;
- (13) Any flow-through process tank;
- (14) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (15) Any storage tank situated in an underground area, such as a basement, cellar, mine-working, drift, shaft, or tunnel area, if the tank is situated upon or above the surface of the floor.

[Note: Section 2-1-1(b)(1) through (6) are excluded from these UST regulations per CFR 280.10(b). Section 2-1-1(b) (7) through (15) are excluded from these UST regulations per C.R.S. § 8-20.5-101(17)(b).]

(c) Partially Excluded UST Systems

The following types of UST systems are deferred from all parts of these regulations except for release response (Article 5) and financial responsibility (Article 7).

- (1) Wastewater treatment tank systems not covered under 2-1-1(b)(2).
- (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. § 2011 and following).
- (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR Part 50.
- (4) Aboveground storage tanks associated with airport hydrant fuel distribution systems.
- (5) Aboveground storage tanks associated with UST systems with field-constructed tanks.

(d) Installation Requirements for Partially Excluded UST Systems

(1) Owners and operators must install an UST system listed in 2-1-1(c) (1), (2), or (3) storing regulated substances (whether of single- or double- wall construction) that meets the following requirements:

- (a) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(b) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) Is constructed or lined with material that is compatible with the stored substance.

(2) Notwithstanding paragraph (1) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

[Note: The following codes of practice may be used as guidance for complying with this section:

(A) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(B) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

(D) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".

2-1-2 Determination of Ownership and Use

An UST that was in use before December 22, 1988 and which was not closed in accordance with national fire codes in effect at the time is considered to be in use until it is permanently closed in accordance with these regulations. An UST that is in use on or after December 22, 1988 is considered to be in use until it is permanently closed in accordance with these regulations.

Section 2-2 UST Design, Construction, Installation and Registration

2-2-1 Design and Performance standards for new and replaced UST systems

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners/operators of new and replaced UST systems must meet the following requirements.

(a) Tanks. Secondary containment and interstitial monitoring is required for all new underground tank installations. Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST system. If an existing underground tank is replaced, the secondary containment and interstitial monitoring requirements apply only to the replaced underground tank. The secondary containment requirements do not apply to repairs meant to restore an underground tank to operating condition. Each tank must be properly designed and constructed, and any portion of an underground tank that routinely contains product must be protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below.

(1) The tank is constructed of fiberglass-reinforced plastic; or

[Note: The following codes of practice may be used to comply with paragraph (a)(1) of this section:

(A) Underwriters Laboratories Standard 1316, "Glass- Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols and Alcohol-Gasoline Mixtures"; or

(B) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".]

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in 2-3-3(b); and

(iv) Cathodic protection systems are operated and maintained in accordance with 2-3-3(a); or

[Note: The following codes of practice may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "sti-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks ";

(B) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(C) Underwriters Laboratories of Canada S603 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and S603.1 "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," and S631 "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems"; or

(D) NACE International Standard Practice SP 0285"External Corrosion Control of Underground Storage Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, Standard for Steel Underground Tanks for Flammable and Combustible Liquids.]

(3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or

[Note: The following codes of practice may be used to comply with paragraph (a)(3) of this section:

(A) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks,"

(B) Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks."

(C) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

(D) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".]

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

[Note: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (4)(i) of this section.]

(ii) Owners/operators maintain records that demonstrate compliance with the requirements of paragraph (a)(4)(i) of this section for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the Director to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.

(b) Piping. Secondary containment and interstitial monitoring is required for all new piping installations, including piping to remote fills. Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST system. For replaced piping, secondary containment and interstitial monitoring is required for the total length of piping connected to a single UST whenever more than 50% or 50 feet (whichever is less) of the piping connected to that tank is replaced. Installation of new or replaced piping will require the installation of containment sumps (under-dispenser [UDC], submersible turbine pump [STP] or transition) on both ends of the secondarily contained pipe for interstitial monitoring. These secondary containment requirements do not apply to repairs meant to restore piping to operating condition. For the purposes of determining when secondary containment is required by these rules, a repair is any activity that does not meet the definition of "replace". These secondary containment requirements also do not apply to vent piping, vapor recovery piping, and fill pipes not connected to remote fills.

The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below.

(1) The piping is constructed of non-corrodible material; or

[Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or

(B) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

]

(2) The piping is constructed of steel and cathodically protected in the following manner:

- (i) The piping is coated with a suitable dielectric material;
- (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
- (iii) Impressed current systems are designed to allow determination of current operating status as required in 2-3-3(b); and
- (iv) Cathodic protection systems are operated and maintained in accordance with 2-3-3(a); or

[Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

(A)

American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"

(B) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(C) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

(D) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."; or

(E) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".]

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

- (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
- (ii) Owners/operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

(4) The piping construction and corrosion protection are determined by the Director to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overfill prevention equipment.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners/operators must use the following spill and overfill prevention equipment:

- (i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (e.g., a spill catchment basin); and
- (ii) Overfill prevention equipment that will:

- (A) Automatically shut off flow into the tank when the tank is more than 95 percent full; or
 - (B) Alert the transfer operator when the tank is more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm.
 - (2) Owners/operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:
 - (i) Alternative equipment is used that is determined by the Director to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or
 - (ii) The UST system is filled by transfers of no more than 25 gallons at one time.
 - (3) Flow restrictors used in vent lines may not be used to comply with paragraph (c)(1)(ii) of this section when overfill prevention is installed or replaced after January 1, 2017.
 - (4) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with Section 2-3-5.
- (d) Dispensers.
- (1) Under-dispenser containment shall be required for all new motor fuel dispenser systems. A motor fuel dispenser system is considered new when:
 - (i) A dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system);
 - (ii) An existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the UST system is replaced at any point below the fire valve. This equipment may include unburied flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping; or
 - (iii) An existing dispenser is removed and replaced with another dispenser and the dispenser island has to be modified (i.e., concrete is broken) to install the dispenser.
 - (2) Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations. Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.
 - (3) Under-dispenser containment shall not be required when an existing dispenser is removed and replaced with another dispenser that is not considered a new dispenser.
- (e) Minimum Secondary Containment Requirements. At a minimum, secondary containment systems must be designed, constructed, and installed to:
- (1) Contain regulated substances released from the tank system until they are detected and removed. To meet this requirement, all secondary containment systems, including containment sumps, shall be tested for leaks at the time of installation and within 30 calendar days of a year thereafter using a testing method listed by the National Workgroup on Leak Detection Evaluations (NWGLDE) or an alternate testing method approved by the Director.

- (2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system. Periodic testing of the secondary containment system is required in accordance with Section 2-3-5. Also, if free product is detected in a containment sump, the sump shall be tested at that time for leaks using a testing method listed in Section 2-3-5r.
- (3) Be checked for evidence of a release at least every 30 calendar days.
- (4) Include interstitial monitoring that meets the requirements of 7 C.C.R. 1101-14 §2-3-4-2(g). If interstitial monitoring is the sole method of release detection for the UST system, sump sensors shall be installed and each sensor shall be tested for functionality by manual tripping on an annual basis.

(f) Compatibility.

- (1) Owners/operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST.
- (2) Owners and operators must notify the implementing agency at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the implementing agency. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:
 - (i) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:
 - (A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
 - (B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
 - (C) Use another option determined by the implementing agency to be no less protective of human health and the environment than the options listed in paragraphs (A) or (B) of this section.
- (3) Owners and operators must maintain records in accordance with Section 2-3-7(b) documenting compliance with paragraph (i) of this section for as long as the UST system is used to store the regulated substance.

[Note: Owners/operators storing alcohol blends may use the following codes to comply with the requirements of this section:

- (A) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations"; and
- (B) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."]

2-2-2 Installation

No person may install, or cause to be installed, a new or replacement UST system or facility until:

- (a) An application, as described in 2-2-2-1 has been approved by the Director and an installation permit has been issued by the Director;
- (b) The installation plan has been reported to the local Fire Department having jurisdiction; and
- (c) The application/inspection fee described in 2-2-2-1(c) has been paid.

2-2-2-1 Installation Application

The Director will make available an application form to facilitate submission of required information. A complete installation application must be received by the Director no less than 20 working days prior to construction. The application must be approved before beginning construction:

- (a) On any new UST system used to store regulated substances.
- (b) On an UST system that is being upgraded to the standards described in these regulations or applicable statutes.
- (c) For each UST installation or upgrade construction plan submitted, the owner/operator must remit a fee of one hundred fifty (\$150) dollars to the Director to cover the costs of the site plan review and installation inspection.
- (d) Denial, Revocation, or Modification of Permit.
 - (1) An UST permit application may be denied if the UST installation or operation is not in conformance with these regulations; or is not in conformance with both Code 30 and Code 30-A of the National Fire Protection Association.
 - (2) An UST permit application may be denied if the permit application is not complete or is determined to be inaccurate.
 - (3) An UST installation permit may be revoked if the UST installation or operation is not in conformance with these regulations or is not in conformance with either Code 30 or Code 30-A of the National Fire Protection Association. If installation activities have not begun within six months of the issuance of the UST installation permit, the UST installation permit will be automatically revoked unless the Director grants an extension in writing.
 - (4) Six months or later after an UST installation permit is issued, the permit may be modified by subsequent statutory or regulatory changes.

2-2-2-2 Installation Requirements

- (a) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (a) of this section:

- (A) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";
- (B) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
- (C) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages."]

- (b) Effective January 1, 2009 all tanks and piping must be properly installed by an installer certified by the Director. To obtain certification from the Director, applicants shall submit a completed Installer Certification Application with a copy of a current certificate issued by the International Code Council (ICC) indicating he or she has passed the ICC UST Installation/Retrofitting examination, or the installer has been certified by the tank and piping manufacturers, or the installer provides certification documentation from other states that have equivalent certification requirements.
- (c) Certification of installation. All owners/operators must demonstrate compliance with paragraph (a) of this section by providing a certification of compliance on the UST registration form in accordance with 2-2-3.

2-2-2-3 Installation Inspection

The Director will inspect the UST system before completion of installation activities to verify the requirements of Section 2-2 are being met.

- (a) The owner/operator shall provide the Director with a 72 hour notice prior to the time of inspection. (b) Any duly authorized agent or employee of the Director shall have authority to enter in or upon the premises of any facility that contains an UST system, containing a regulated substance, for the purpose of verifying that such UST system and its required records are in compliance with these regulations.

2-2-3 UST System Registration

- (a) Each owner/operator of a regulated UST system must register each UST system with the Director within 30 calendar days after the first day on which the system is actually used to contain a regulated substance. This registration must be renewed annually, on or before the calendar date of the initial registration, in each succeeding year after 1989. The owner/operator is required to pay a registration fee as set by statute for each tank registered.
- (b) All regulated UST systems and facilities must be registered on a form provided by the Director, regardless of use, size, or type of regulated substance stored therein; and regardless of whether the tanks and facilities are in service or in temporary closure.

[Note: Owners/operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the Colorado Department of Health in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to Section 103(c) of CERCLA. Owners/operators who have not complied with the notification requirements may use the registration form described in 2-2-3(b)]

- (c) Owners required to register tanks under paragraph (a) of this section must register each tank they own. Owners may register several tanks using one registration form, but owners who own tanks located at more than one place of operation must file a separate registration form for each separate place of operation.
- (d) Any time there is a change in operation, including upgrading of the UST system, changes in operation including a change of owner or operator, or completed closure of an UST system, the owner/operator is required to submit an updated registration within 30 calendar days.
- (e) Registration forms required to be submitted under (a) and (d) of this section must provide all of the required information for each tank.
- (f) All owners/operators of new UST systems must certify in the registration form, compliance with the following requirements:
 - (1) Installation of tanks and piping under 2-2-2-2(a);

- (2) Cathodic protection of steel tanks and piping under 2-2-1(a)(2);
 - (3) Financial responsibility under Article 7 of these regulations; and
 - (4) Release detection under 2-3-4.
- (g) All owners/operators of new UST systems must certify in the registration form that the method used to install the UST system complies with the requirements in Section 2-2-2-2(a).
 - (h) After July 1, 1989, any person who sells a tank intended to be used as an UST must notify the purchaser of such tank of the owner's registration obligations under (a) of this section.
 - (i) The registration form supplied by the Director will meet the requirements of Section 9002 of the federal Solid Waste Disposal Act as amended.
 - (j) The required fee for UST registration is \$35.00 per tank per year as authorized by C.R.S. § 8-20.5-102; and the fee for the installation plan review and the installation inspection is set at \$150.00, as authorized by C.R.S. § 8-20.5-204, to cover the costs of administering this section.

2-2-4 Upgrading existing UST System

Owners and operators must permanently close (in accordance with Section 2-4) any UST system that does not meet the new UST system performance standards in Section 2-2 or has not been upgraded in accordance with paragraphs (b) through (d) of this section. This does not apply to previously deferred UST systems described in Section 2-1-1-(a)(1) of this section and where an upgrade is determined to be appropriate by the implementing agency.

- (a) Alternatives allowed. All existing UST systems must comply with one of the following:
 - (1) New UST system performance standards under Section 2-2-1; or
 - (2) Upgrading requirements in (b) through (d) of this section; or
 - (3) Closure requirements under Section 2-4 of these regulations, including applicable requirements for corrective action under Article 5.
- (b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:
 - (1) Internal lining. A tank may be upgraded by internal lining if:
 - (i) The lining is installed in accordance with the requirements of Section 2-2-5, and
 - (ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank must be permanently closed in accordance with Section 2-4.
 - (2) Cathodic protection. Tanks upgraded by cathodic protection must meet the requirements of Section 2-2-1(a)(2) and the integrity of the tank must have been ensured using one of the following methods:

- (i) The tank was internally inspected and assessed to ensure that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
 - (ii) The tank had been installed for less than 10 years and is monitored monthly for releases in accordance with Section 2-3-4-2(d) through (i); or
 - (iii) The tank had been installed for less than 10 years and was assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of Section 2-3-4-2(c). The first tightness test must have been conducted prior to installing the cathodic protection system. The second tightness test must have been conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or
 - (iv) The tank was assessed for corrosion holes by a method that is determined by the Director to prevent releases in a manner that is no less protective of human health and the environment than (b)(2)(i) through (iii) of this section.
- (3) Internal lining combined with cathodic protection. Tanks upgraded by both internal lining and cathodic protection must meet the following:
- (i) The lining was installed in accordance with the requirements of Section 2-2-5; and
 - (ii) The cathodic protection system meets the requirements of Section 2-2-1(a)(2).

[Note: The following historical codes of practice were listed as options for complying with this section:

- (A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";
- (B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";
- (C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and
- (D) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."]

- (c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of Section 2-2-1(b)(2).

[Note: The codes and standards listed in the note following Section 2-2-4(b)(3)(ii) may be used to comply with this requirement.]

- (d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in Section 2-2-1(c).

2-2-5 Repairs

Owners/operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

- (a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

[Note: The following codes and standards may be used to comply with paragraph (a) of this section:

- (A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";
 - (B) American Petroleum Institute Recommended Practice 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";
 - (C) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
 - (D) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair",
 - (E) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks.",
 - (F) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks",
 - (G) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection.", or
 - (H) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".]
- (b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
 - (c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications.
 - (d) If a release of regulated substance is identified during repairs to UST system equipment, the owner/operator shall report the release according to Article 4.
 - (e) Post-repair testing
 - (1) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair. All other repairs to tanks and piping must be tightness tested in accordance with 2-3-4-2(c) and 2-3-4-3 within 30 calendar days following the date of the completion of the repair unless:

- (i) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or
- (ii) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in Section 2-3-4-2(d) through (i); or
- (iii) Another test method is used that is determined by the Director to be no less protective of human health and the environment than those listed above.

[Note: The following codes of practice may be used to comply with paragraph (e)(1) of this section:

- (A) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks"; or
 - (B) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"; or
 - (C) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".]
- (2) Within 6 months following the repair of any cathodically protected UST system the cathodic protection system must be tested in accordance with Section 2-3-3(a) and (b) to ensure that it is operating properly.
 - (3) Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with Section 2-2-5(e)(3) to ensure it is operating properly.

Section 2-3 Operation

2-3-1 Operator Training

UST Operator Training is a requirement designed to ensure knowledge regarding operating and maintaining UST systems. These requirements apply to UST systems regulated under Subtitle I, except those excluded by these regulations.

2-3-1-1 Classes of Operators

For purposes of implementing the operator training requirements, these regulations establish Colorado specific operator training, testing and certification requirements for three classes of operators identified as Class A, Class B, and Class C. Owners/operators are required to identify and designate, for each UST system or group of UST systems at a facility, at least one named individual for each class of operator outlined in these regulations. All individuals designated as a Class A, B, or C operator must, at a minimum, be trained and certified according to these regulations by December 31, 2009.

Separate individuals may be designated for each class of operator described above or an individual may be designated to more than one of the above operator classes. An individual who is designated to more than one operator class must be trained in each operator class for which he or she is designated. Because an individual may be designated for more than one operator class, the Director will allow a training approach that encompasses training for more than one operator class.

To assist in identifying responsible individuals to be trained pursuant to these regulations, the following sections characterize, in general terms, each class of operator. These sections also identify general training requirements pertaining to operating and maintaining UST systems.

2-3-1-2 Class A Operator

A Class A operator has primary responsibility to operate and maintain the UST system. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. The general and minimum requirements for a Class A operator are as follows:

(a) General Requirements: This individual focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. For example, this individual typically ensures that appropriate individual(s):

- (1) Properly operate and maintain the UST system.
- (2) Maintain appropriate records.
- (3) Are trained to operate and maintain the UST system and keep records.
- (4) Properly respond to emergencies caused by releases or spills from UST systems at the facility.
- (5) Make financial responsibility documents available to the Director as required.

(b) Minimum Requirements: The Class A operator must be trained in the following:

- (1) A general knowledge of UST system requirements so he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of these regulations regarding:
 - (i) Spill prevention
 - (ii) Overfill prevention
 - (iii) Release detection
 - (iv) Corrosion protection
 - (v) Emergency response
 - (vi) Product compatibility
- (2) Financial responsibility documentation requirements.
- (3) Notification requirements.
- (4) Release and suspected release reporting.
- (5) Temporary and permanent closure requirements.
- (6) Class B and C operator training requirements.

2-3-1-3 Class B Operator

A Class B operator implements applicable UST regulatory requirements and standards in the field. This individual implements day-to-day aspects of operating, maintaining, and recordkeeping for USTs at one or more facilities. The general and minimum requirements for a Class B operator are as follows:

- (a) General Requirements: This individual typically monitors, maintains, and ensures:
 - (1) Release detection method, recordkeeping, and reporting requirements are met.
 - (2) Release prevention equipment, recordkeeping, and reporting requirements are met.
 - (3) All relevant equipment complies with performance standards.
 - (4) Appropriate individuals are trained to properly respond to emergencies caused by releases or spills from UST systems at the facility.
- (b) Minimum Requirements: Compared with training for the Class A operator, training for the Class B operator will provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements. The Class B operators training must encompass the following:
 - (1) Components of UST systems.
 - (2) Materials of UST system components.
 - (3) Methods of release detection and release prevention applied to UST components.
 - (4) Operation and maintenance requirements of these regulations that apply to UST systems and include:
 - (i) Spill prevention
 - (ii) Overfill prevention
 - (iii) Release detection
 - (iv) Corrosion protection
 - (v) Emergency response
 - (vi) Product compatibility
 - (5) Reporting and recordkeeping requirements.
 - (6) Class C operator training requirements.

2-3-1-4 Class C Operator

A Class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems. This individual notifies the Class B or Class A operator and appropriate emergency responders when necessary. It is not necessary that all employees of the facility are Class C operators, although at least one Class C Operator must be present during operating hours at attended facilities.

- (a) General Requirements: This individual typically:

- (1) Controls or monitors the dispensing or sale of regulated substances, or
 - (2) Is responsible for initial response to alarms or releases.
- (b) Minimum Requirements: At a minimum, the Class C operator must be trained to:
- (1) Take action in response to emergencies (such as, situations posing an immediate danger or threat to the public or to the environment and that require immediate action) or alarms caused by spills or releases from an UST system.

2-3-1-5 Acceptable Training and Certification Processes

Operator training must evaluate operator knowledge of the minimum training requirements described for each class of operator in Section 2-3-1(2), (3) and (4). The following is a list of acceptable approaches to meet training requirements stated in these regulations:

- (a) Possession of a current certificate issued by the International Code Council (ICC) indicating he or she has passed the Colorado UST System Class A or B Operator exam.
- (b) For Class C operator training, possession of a current certificate issued by the owner indicating that he or she has successfully completed training conducted by a certified Class A or Class B operator.
- (c) An operator training program that has received prior approval from the Director. The program may include in-class, on-line, or hands-on training. Such a program must include an evaluation of operator knowledge through testing, practical demonstration, or other tools determined as acceptable by the state.
- (d) To address operators responsible for UST systems in multiple states, the Director may accept operator training certification verification from other states that have equivalent operator training requirements.

2-3-1-6 Training and Certification Deadlines and Schedules

- (a) Effective January 1, 2010, designated Class A and B operators shall be trained and possess a current certificate issued by a Director-approved trainer indicating he or she has passed the Colorado UST System Class A or B operator exam.
- (b) Effective January 1, 2010, designated Class C operators shall be trained and possess a current certificate issued by a Class A or B operator that developed or conducted the training.
- (c) By January 1, 2010, owners of UST systems shall submit a signed statement to the Director indicating that the owner understands and is in compliance with all applicable UST requirements, and identifying the designated Class A or B operator(s) for each facility owned. The owner shall inform the Director of any change of designated Class A or B operator(s) no later than 30 calendar days after the change. Documentation identifying the designated Class C operators shall be maintained on site.
- (d) After January 1, 2010 new operators shall be trained within the following timeframes:
 - (1) Class A and Class B operators must be trained within 30 calendar days after assuming full operation and maintenance responsibilities at the UST system.
 - (2) Class C operators must be trained before assuming full responsibility for responding to emergencies.

2-3-1-7 Retraining Requirements

If the Director determines an UST system is out of compliance, the Class A and/or Class B operator must be retrained and recertified within 90 calendar days. At a minimum, an UST system is out of compliance if the system:

- (a) Meets any of the delivery prohibition criteria outlined in Section 6-2, or
- (b) Is not in significant compliance with other requirements, such as temporary or permanent closure, tank registration or financial responsibility.

2-3-1-8 Documentation

Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with 2-3-7 as follows:

(a) The list must:

- (1) Identify all Class A, Class B, and Class C operators currently designated for the facility; and
- (2) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.

(b) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:

- (1) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;
- (2) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and
- (3) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.

2-3-2 Spill and Overfill Prevention

- (a) Owners/operators must ensure that releases due to spilling or overfilling do not occur. The owner/operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.
- (b) The owner/operator must report, investigate, and clean up any spills and overfills in accordance with Articles 4 and 5.
- (c) Owners/operators must maintain spill and overfill equipment according to Section 2-2-1(c).

[Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with this section. Further guidance on spill and overfill prevention appears

in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."]

2-3-3 Corrosion Protection

All owners/operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances or permanently closed in accordance with Section 2-4-2.

- (a) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
 - (1) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the Director; and
 - (2) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

[Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (a)(2) of this section.]

- (b) UST systems with impressed current cathodic protection systems must also be inspected every 60 calendar days to ensure that the equipment is running properly.
- (c) Where internal lining was installed to satisfy corrosion protection requirements, the tank must meet the requirements listed in 2-2-4(b).

2-3-4 Release Detection

2-3-4-1 General requirements for all UST systems

- (a) Owners/operators of UST systems that contain a regulated substance or hazardous substance must provide a method, or combination of methods, of release detection that:
 - (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
 - (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition. Beginning on January 1, 2020, electronic and mechanical components must be tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the implementing agency to be no less protective of human health and the environment than the two options listed above. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:
 - (i) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;
 - (ii) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(iii) Automatic line leak detector: test operation to meet criteria in 2-3-4-3(a)(1) by simulating a leak;

(iv) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(v) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

[Note: The following code of practice may be used to comply with paragraph (a)(2) of this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".]

, and

- (3) Meets the performance requirements in 2-3-4-2, 2-3-4-3 or 2-5 as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods , must be capable of detecting the leak rate or quantity specified for that method in 2-3-4-2(b), (c), (d), (h), or (i), 2-3-4-3(a)(1) or (2), or 2-5 with a probability of detection of 0.95 and a probability of false alarm of 0.05.
- (b) When a release detection method operated in accordance with the performance standards in 2-3-4-2, 2-3-4-3 or 2-5 indicates a release may have occurred, owners/operators must notify the Director in accordance with Article 4.
- (c) Any existing UST system that does not apply a method of release detection that complies with the requirements of this section must complete the closure procedures in 2-4 immediately. For previously deferred UST systems described in Sections 2-1 and 2-5, this requirement applies after the effective dates described in 2-1-1(a)(1)(ii) and (iii) and Section 2-5-2(a).

2-3-4-2 Requirements for regulated substance UST Systems

Owners/operators of UST system must provide release detection for tanks at least every 30 calendar days or as otherwise specified in these regulations. The methods that satisfy release detection requirements are listed below:

(a) Inventory Control.

(1) Product inventory control can be used as the sole method for release detection:

(i) Until 10 years after the tank is installed or upgraded according to 2-2-4, and

(ii) If tank tightness testing as described in (c) of this section is performed at least every 5 years after the tank is installed or upgraded.

(2) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

- (iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
- (v) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
- (vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

[Note: Practices described in the American Petroleum Institute "Recommended Practice RP 1621 for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this subsection.]

(b) Manual tank gauging.

- (1) Manual tank gauging may be used as the sole method of release detection:
 - (i) For the life of a tank that has a nominal capacity of 1,000 gallons or less that meet the tank diameter criteria in the table in paragraph (3)(iv) of this section, or
 - (ii) For a tank with a nominal capacity of 1,001 to 2,000 gallons:
 - (A) Until 10 years after the tank is installed or upgraded according to 2-2-4, and
 - (B) If tank tightness testing as described in (c) of this section is performed at least every 5 years after the tank is installed or upgraded.
- (2) For tanks of greater than 2,000 gallons nominal capacity, manual tank gauging may not be used to satisfy release detection requirements of this section.
- (3) Manual tank gauging must meet the following requirements:
 - (i) Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;
 - (ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
 - (iii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
 - (iv) A release is suspected and subject to the requirements of Article 4 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity (Gallons)	Tank Dimensions	Weekly Standard 1 Test (Gallons)	Monthly Standard Average of 4 Tests (Gallons)	Minimum Rest Period Duration
Up to 550	N/A	10	5	36 hours
551-1,000	64" diameter	9	4	44 hours
551-1,000	48" (diameter	12	6	58 hours
551-1,000 (also requires periodic tank tightness testing)	N/A	13	7	36 hours
1,000	64" (diameter) x 73" (length)	9	4	44 hours
1,000	48" (diameter) x 128" (length)	12	6	58 hours
1,001 - 2,000 (also requires periodic tank tightness testing)	N/A	26	13	36 hours

- (c) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate, with a probability of detection of 0.95, from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
- (d) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
- (1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product;
 - (2) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of (a) of this section; and
 - (3) The test must be performed with the system operating in one of the following modes:
 - (i) In-tank static testing conducted at least once every 30 days; or
 - (ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.
- (e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
- (1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

- (2) The stored regulated substance, or a tracer compound placed in the UST system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
 - (3) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 calendar days;
 - (4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
 - (5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance, or a tracer compound placed in the UST system;
 - (6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e)(1) through (4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
 - (7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (f) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:
- (1) The regulated substance is immiscible in water and has a specific gravity of less than one;
 - (2) Groundwater is never more than 20 vertical feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
 - (3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;
 - (4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
 - (5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
 - (6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;
 - (7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f)(1)-(5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
 - (8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed

and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

- (1) For double-walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;
- (2) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (3) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;
 - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (not more than 0.000001 cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;
 - (ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
 - (iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;
 - (iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 calendar days;
 - (v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
 - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (h) Statistical inventory reconciliation: Release detection methods based on the application of statistical principles to inventory data similar to those described in 2-3-4-2(a) must meet the following requirements:
 - (1) Report a quantitative result with a calculated leak rate;
 - (2) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and
 - (3) Use a threshold that does not exceed one-half the minimum detectable leak rate.
- (i) Other methods. Any other type of release detection method, or combination of methods, can be used if:
 - (1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
 - (2) The Director may approve another method if the owner/operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c)-(h) of this section. In comparing methods, the Director shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner/operator must comply with any conditions

imposed by the Director on its use to ensure the protection of human health and the environment.

2-3-4-3 Requirements for Piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(a) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(1) Be equipped with automatic line leak detectors which alert the owner/operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with Section 2-3-4-1(a)(2); and

(2) Conduct periodic line release detection which will consist of:

(i) An annual test of piping that can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; or

(ii) An applicable tank method conducted on a monthly basis. Except as described in 2-3-4-2(a), (b), and (c), any of the methods in 2-3-4-2(e) through (i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances. Automatic tank gauges (ATG) as described in subsection 2-3-4-2(d) may be considered an applicable tank method to be used for release detection on lines if the ATG is connected to equipment that allows the capability for this type of monitoring.

(b) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least once every 3 years and in accordance with 2-3-4-3(a)(2)(i), or use a monthly monitoring method conducted in accordance with 2-3-4-3(a)(2)(ii). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(1) The below-grade piping operates at less than atmospheric pressure;

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) Only one check valve is included in each suction line;

(4) The check valve is located directly below and as close as practical to the suction pump; and

(5) A method is provided that allows compliance with paragraphs (b)(1) – (4) of this section to be readily determined.

2-3-4-4 Requirements for hazardous substance UST systems

Owners/operators of hazardous substance UST systems must provide containment that meets the following requirements and monitor these systems using 2-3-4-2(g) at least every 30 days:

(a) Secondary containment systems must be designed, constructed and installed to:

(1) Contain regulated substance leaks from the primary containment until they are detected and removed;

- (2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
- (3) Be checked for evidence of a release at least every 30 calendar days.

[Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements for tanks installed on or before January 1, 2017.]

(b) Double-walled tanks must be designed, constructed, and installed to:

- (1) Contain a leak from any portion of the inner tank within the outer wall; and
- (2) Detect the failure of the inner wall.

(c) External liners (including vaults) must be designed, constructed, and installed to:

- (1) Contain 100 percent of the capacity of the largest tank within its boundary;
- (2) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and
- (3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(d) Underground piping must be equipped with secondary containment that satisfies the requirements of this section (e.g., trench liners, double-walled pipe). In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with 2-3-4-3(a)(1).

(e) For hazardous substance UST systems installed on or before January 1, 2017 other methods of release detection may be used if owners/operators:

- (1) Demonstrate to the Director that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in 2-3-4-2(b)-(j) can detect a release of petroleum;
- (2) Provide information to the Director on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,
- (3) Obtain written approval from the Director to use the alternate release detection method before the installation and operation of the new UST system.

[Note: Pursuant to 40 CFR § 302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.]

2-3-5 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

(a) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

(i) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the compliance inspections described in 2-3-6. Owners and operators must begin meeting paragraph (a)(1)(ii) of this section and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements);

(B) Code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) Requirements determined by the implementing agency to be no less protective of human health and the environment than the requirements listed in paragraphs (a)(1)(ii)(A) and (B) of this section.

(2) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in 2-2-1(c) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (a)(1)(ii)(A)-(C) of this section.

(b) Owners and operators must begin meeting these requirements as follows:

(1) For UST systems in use on or before January 1, 2017, the initial spill prevention equipment test, containment sump test and overfill prevention equipment inspection must be conducted not later than January 1, 2020; or

(2) For UST systems brought into use after January 1, 2017, these requirements apply at installation.

(c) Owners and operators must maintain records as follows (in accordance with 2-3-7) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

(1) All records of testing or inspection must be maintained for three years; and

(2) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

[Note: The following code of practice may be used to comply with paragraphs (a)(1)(ii) and (a)(2) of this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".]

2-3-6 Compliance Inspections

This section describes the inspections required to be conducted by the owner or operator of the UST system, as well as periodic inspections completed by the Director.

2-3-6-1 Monthly Compliance Inspections

- (a) The designated Class A or B operator or a delegated designee shall perform monthly visual inspections of all UST systems for which they are designated. The results of each inspection shall be recorded on a monthly inspection checklist. The monthly visual inspection shall include the following:
 - (1) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present. Ensure records of release detection testing are reviewed and current.
 - (2) Visually check spill containment or manholes for damage (cracks, holes, bulges etc.). Remove liquid or debris from spill containers (fill and vapor recovery). Check for and remove obstructions in the fill pipe. Check the fill cap to make sure it is securely on the fill pipe. For double-walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area.
 - (3) Inspect hanging hardware on dispensers and/or other visible piping for the presence of regulated substance leakage.
- (b) The designated operator(s) or delegated designee shall provide the owner or operator with a copy of each monthly inspection checklist, and alert the owner or operator of any condition discovered during the monthly visual inspection that may require follow-up actions.
- (c) The owner or operator shall maintain a copy of the monthly inspection checklist and all attachments for the previous twelve months. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries. The records shall be made available for review to OPS upon request.

[Note: The following code of practice may be used to comply with this section: Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems".]

2-3-6-2 Annual Operational Compliance Inspections

- (a) The designated Class A or B operator(s) shall perform an annual operational compliance inspection of all UST systems for which they are designated. The annual operational compliance inspection shall include, but is not limited to, the following:
 - (1) Compile and review monthly release detection, visual inspection and corrosion protection records from the prior twelve months.
 - (2) Compile and review the alarm history report or log for the prior twelve months, and checking that each alarm condition was documented and responded to appropriately, including the reporting of suspected or confirmed releases.
 - (3) Conduct functionality testing on all line leak detectors, sump sensors and overfill prevention equipment in accordance with manufacturer's specifications to ensure proper installation and operation. Also check hand held release detection equipment such as tank gauge sticks or groundwater bailers for operability and serviceability.

- (4) Conduct visual inspection of containment sumps. Check for damage, leaks to the containment area, or releases to the environment. Remove liquid (in contained sumps) or debris. For double-walled sumps with interstitial monitoring, check for a leak in the interstitial area. (5) Check that all required testing and maintenance for the UST system has been completed, and document the dates these activities occurred.
- (6) Verify that all designated Class C operators have been trained in accordance with 2-3-1-4 and 2-3-1-5 of these regulations.
- (7) Complete an Annual Operational Compliance Inspection Report and Certification Form for each facility using forms provided by OPS.
- (b) The designated Class A or B operator(s) shall provide the owner or operator with a copy of the annual operational compliance inspection report, and alert the owner or operator of any condition discovered during the annual compliance inspection that may require follow-up actions. The report must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.
- (c) The owner or operator shall submit a copy of the annual operational compliance inspection report and all attachments for the previous twelve months to OPS on an annual basis or within 60 calendar days of an OPS request for records.

2-3-6-3 Inspections Conducted by the Director

- (a) Any duly authorized agent or employee of the Director shall have authority to enter in or upon the premises of any facility that contains an UST system, containing a regulated substance, for the purpose of verifying that such UST system and its required records are in compliance with these regulations.
- (b) Per CRS Section 8-20-223.5, the Director shall conduct an emission inspection of all USTs that are located in the geographical area designated by Regulation #7 of the Colorado Department of Public Health and Environment 5 C.C.R. 1001-9 and which contain petroleum distillate such as gasoline, to insure pollution control equipment is installed and is in operating condition.

2-3-7 Reporting and Record Keeping

Owners/operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the Director, as well as requests from OPS for document submission, testing, and monitoring pursuant to Section 9005 of Subtitle I of the Solid Waste Disposal Act, as amended.

- (a) Reporting. Owners and operators must submit the following information to the implementing agency:
 - (1) Notification for all UST systems (Section 2-2-3), which includes certification of installation for new UST systems (Section 2-2-2-2) and notification when any person assumes ownership of an UST system (Section 2-2-3(d));
 - (2) Notification prior to UST systems switching to certain regulated substances (Section 2-2-1(f));
 - (3) Reports of all releases including suspected releases, spills, and overfills (Section 4-1), and confirmed releases (Section 4-3);
 - (4) Corrective actions planned or taken including initial abatement measures (Section 5-1-1), initial site characterization (Section 5-1-2), free product removal (Section 5-1-1), investigation of soil and groundwater cleanup (Section 5-2), and corrective action plan (Section 5-3); and

- (5) A notification before permanent closure or change-in-service (Section 2-4).
- (b) Record keeping. Owners/operators must maintain the following information:
- (1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used 2-2-1(a)(4) and (b)(3)).
 - (2) Documentation of operation of corrosion protection equipment as required in 2-2-1(a) and (b) and 2-2-3;
 - (i) The results of the last three 60-day inspections; and
 - (ii) The results from the last two system tests.
 - (3) Documentation of compatibility for UST systems (Section 2-2-1(f));
 - (4) Documentation of UST system repairs (Section 2-2-5);
 - (5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (Section 2-3-5);
 - (6) Documentation of periodic compliance inspections (Section 2-3-6);
 - (7) Compliance with release detection requirements (Section 2-3-4);
 - (i) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the Director, from the date of installation. Not later than January 1, 2020, records of site assessments required under Section 2-3-4-2(e)(6) and (f)(7) must be maintained for as long as the methods are used. Records of site assessments developed after January 1, 2017, must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the implementing agency;
 - (ii) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the Director, except as follows:
 - (a) that the results of tank tightness testing conducted in accordance with 2-3-4-2(c) must be retained until the next test is conducted; and
 - (iii) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the Director. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.
 - (8) Records in accordance with this section that are capable of demonstrating compliance with closure requirements under Section 2-4. The results of the excavation zone assessment required in 2-4-3(b) must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:
 - (i) By the owners/operators who closed the UST system;

- (ii) By the current owners/operators of the UST system site; or
- (iii) By mailing these records to the Director if they cannot be maintained at the closed facility.

[Note: All applicants to the Fund may be required to maintain closure records until reimbursement is complete.]

- (9) Documentation of the emptying of a tank following seasonal operation, temporary closure, or prior to a repair.
 - (10) Documentation of operator training (Section 2-3-1-8).
- (c) Availability and Maintenance of Records. Owners/operators are required, upon request, to provide all records referenced in these regulations to the Director. Owners/operators must keep the required records either:
- (1) At the UST site and immediately available for inspection by the Director; or
 - (2) At a readily available alternative site so they can be sent to the Director upon request; or
 - (3) In the case of permanent closure records required under this section, owners/operators are also provided with the additional alternative of mailing closure records to the Director if they cannot be kept at the site or an alternative site as indicated above.
- (d) Notwithstanding the above, for Fund reimbursement purposes, persons may be required to maintain the above or other records in accordance with Fund requirements.

Section 2-4 Closure of UST Systems

2-4-1 Temporary Closure

- (a) Owners/operators shall notify the Director in writing at least 10 calendar days prior to placing an UST system in temporary closure, and at that same time submit records documenting the prior 12 months of release detection and corrosion protection testing (if applicable) for tanks and lines. In lieu of submitting these records, owner/operator may conduct a precision tightness test on the tanks and lines and complete a site assessment in accordance with 2-4-3, and submit these results with the temporary closure notification.
- (b) A temporarily closed UST system must be emptied by removing all materials using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system.
- (c) When an UST system is temporarily closed, owners/operators must continue operation and maintenance of corrosion protection in accordance with 2-3-4. Because the tanks must be emptied, release detection is not required.
- (d) When an UST system is temporarily closed, vent lines must be left open and functioning. If the temporary closure period is 3 months or more, all pumps, manways, ancillary equipment and lines other than vent lines must be capped and secured, unless an alternate schedule is approved by the Director.
- (e) When an UST system is temporarily closed for more than 12 months, owners/operators must permanently close the UST system in accordance with 2-4-2, unless the Director provides a written extension of the 12-month temporary closure period. Before requesting this extension, owners/operators must complete a site assessment as required by the Director.

- (f) Owner/operators shall notify the Director in writing no more than 30 calendar days prior to placing an UST back in service, and at that same time submit corrosion protection records (if applicable) for the period of temporary closure, and documentation of passing tightness tests to include ullage for the tanks conducted within the past 30 calendar days. The owner/operator shall obtain passing line tests immediately following the introduction of fuel into the lines and submit documentation of testing to the Director within 10 calendar days.
- (g) If an owner/operator operates a facility which has a specific period of time or season during the year when the tank system is empty, as described in (b) of this section, the requirements for maintaining corrosion protection and the following requirements below will apply:
 - (1) The owner/operator shall notify the Director that the facility does include seasonal operation on a form provided by the Director. If this information changes, the owner/operator shall complete and submit the form to the Director.
 - (2) The period may not exceed 6 consecutive months.
 - (3) The owner/operator shall maintain manifest documentation completed during emptying of the tank.
 - (4) At the end of the seasonal period, the owner/operator must conduct one of the following actions:
 - (i) Return the tank to service.
 - (ii) Place the tank into proper temporary closure. The owner/operator must notify the Director in writing within 10 calendar days, submit records according to (a) as applicable and complete requirements in (d) immediately.
 - (iii) Permanently close the tank as required by 2-4-2.

2-4-2 Permanent Closure

At least 10 calendar days before beginning either permanent closure or a change-in-service under this section, owners/operators must notify the Director of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action required by the Director. In addition to the requirements of this section, the owner/operator should contact local municipal officials, such as the fire department, to inform them of the intended closure activities.

(a) Removal

To permanently close a tank by removal, owners/operators must empty the tank by removing all liquids and accumulated sludges and inert the tank prior to removal. A site assessment must be conducted according to 2-4-3(b).

[Note: The following cleaning and closure procedures may be used to comply with this section:

- (A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";
- (B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";
- (C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and
- (D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard...Working in Confined Space" may be used as

guidance for conducting safe closure procedures at some hazardous substance tanks.]

(b) Closure in Place

All tanks permanently closed in place must be filled with an inert solid material and a site assessment must be conducted according to 2-4-3(b).

(c) Change in Service

Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners/operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 2-4-3.

2-4-3 Site Assessment

- (a) Before an extension to temporary closure, permanent closure or a change-in-service is completed, owners/operators must measure for the presence of a release where contamination is most likely to be present at the UST site. The requirements of this section are satisfied if one of the external release detection methods allowed in 2-3-4-2(e) or (f) is operating in accordance with the requirements in 2-3-4-2 at the time of closure, and indicates no release has occurred.
- (b) For assessments during storage tank system removal, the owner/operator must collect soil samples from beneath each tank, beneath each dispenser island, beneath areas of piping, and beneath any loading racks. For assessments during storage tank temporary closure, closure in-place or change-in-service, the owner/operator shall collect samples of the type and at locations as specified by the Director.
- (c) Samples collected at all sites must be analyzed for individual chemicals of concern (COC) as described in 5-2.
- (d) If contaminated soils, contaminated groundwater, petroleum vapor or free product as a liquid is discovered under this section, or by any other manner, owners/operators must report the discovery in accordance with Article 4.
- (e) If the tank closure assessment does not identify a release, the owner/operator must submit documentation of the assessment to the Director within 30 calendar days of the tank closure.

Section 2-5 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

2-5-1 Definitions

For purposes of this section, the following definitions apply:

Airport hydrant fuel distribution system (also called airport hydrant system) means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

Field-constructed tank means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

2-5-2 General requirements

- (a) Implementation of requirements. Owners and operators must comply with the requirements of this section for UST systems with field-constructed tanks and airport hydrant systems as follows: (1) For UST systems installed on or before January 1, 2017, the requirements are effective according to the following schedule:

Requirement	Effective Date
Upgrading UST systems; general operating requirements; and operator training	January 1, 2020
Release detection	January 1, 2020
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in paragraph (b) of this section)	January 1, 2017

- (2) For UST systems installed after January 1, 2017, the requirements apply at installation.
- (b) Not later than January 1, 2020, all owners of previously deferred UST systems must submit a one-time notice of tank system existence to the implementing agency, using the form described in Section 2-2-3(b). Owners and operators of UST systems in use as of January 1, 2017, must demonstrate financial responsibility at the time of submission of the notification form.
- (c) Except as provided in Section 2-5-3, owners and operators must comply with the requirements of these regulations.
- (d) In addition to the codes of practice listed in Section 2-2-1, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, Petroleum Fuel Facilities, when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

2-5-3 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems

- (a) Exception to piping secondary containment requirements. Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.
- (b) Upgrade requirements. Not later than January 1, 2020, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before January 1, 2017 must meet the following requirements or be permanently closed pursuant to 2-4 of this section.
- (1) Corrosion protection. UST system components in contact with the ground that routinely contain regulated substances must meet one of the following:
- (i) Except as provided in paragraph (a) of this section, the new UST system performance standards for tanks at 2-2-1(a) and for piping at 2-2-1(b); or
 - (ii) Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meets the following:
 - (A) Cathodic protection must meet the requirements of 2-2-1(a)(2)(ii), (iii) and (iv) for tanks, and 2-2-1(b)(2)(ii), (iii), and (iv) for piping.
 - (B) Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the implementing

agency to adequately assess the tank for structural soundness and corrosion holes.

[Note: The following codes of practice may be used to comply with this paragraph:

- (A) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";
- (B) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (C) National Leak Prevention Association Standard 631, Chapter C, "Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection"; or
- (D) American Society for Testing and Materials Standard G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks".]

- (2) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems must comply with new UST system spill and overfill prevention equipment requirements specified in 2-2-1(c).
- (c) Compliance inspections. In addition to the compliance inspection requirements in 2-3-6, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to 2-3-6-1(c).
 - (1) Hydrant pits – visually check for any damage; remove any liquid or debris; and check for any leaks, and
 - (2) Hydrant piping vaults – check for any hydrant piping leaks.
- (d) Release detection. Owners and operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this section not later than January 1, 2020.
 - (1) Methods of release detection for field-constructed tanks. Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in Section 2-3-4. Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in 2-3-4 (except 2-3-4-2(e) and (f) must be combined with inventory control as stated below) of this section or use one or a combination of the following alternative methods of release detection:
 - (i) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;
 - (ii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;
 - (iii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(iv) Perform vapor monitoring (conducted in accordance with 2-3-4-2(e) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(v) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(A) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(B) Perform vapor monitoring or groundwater monitoring (conducted in accordance with 2-3-4-2(e) or (f), respectively, for the stored regulated substance) at least every 30 days; or

(vi) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (i) through (v) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability of detection.

(2) Methods of release detection for piping. Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in Section 2-3-4. Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in 2-3-4 (except 2-3-4-2(e) and (f) must be combined with inventory control as stated below) of this section or use one or a combination of the following alternative methods of release detection:

(i)(A) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (Gallons)	Semiannual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)	Annual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

(B) Piping segment volumes ≥ 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

Phase In For Piping Segments ≥ 100,000 Gallons In Volume	
First test	Not later than January 1, 2020 (may use up to 6.0 gph leak rate)
Second test	Between January 1, 2020, and January 1, 2023 (may use up to 6.0 gph leak)
Third test	Between January 1, 2023, and January 1, 2024 (must use 3.0 gph for leak rate)
Subsequent tests	After January 1, 2024, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above

- (ii) Perform vapor monitoring (conducted in accordance with 2-3-4-2(e) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
 - (iii) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and
 - (A) Perform a line tightness test (conducted in accordance with paragraph (i) of this section using the leak rates for the semiannual test) at least every two years; or
 - (B) Perform vapor monitoring or groundwater monitoring (conducted in accordance with 2-3-4-2(e) or (f), respectively, for the stored regulated substance) at least every 30 days; or
 - (iv) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (i) through (iii) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability of detection.
- (3) Recordkeeping for release detection. Owners and operators must maintain release detection records according to the recordkeeping requirements in 2-3-6.
- (e) Applicability of closure requirements to previously closed UST systems. When directed by the implementing agency, the owner and operator of an UST system with field-constructed tanks or airport hydrant system permanently closed before January 1, 2017, must assess the excavation zone and close the UST system in accordance with Section 2-4 if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

ARTICLE 3 ABOVEGROUND STORAGE TANKS

Section 3-1 AST Program Scope and Applicability

Aboveground storage tank (AST) systems in Colorado are regulated to protect the people and environment of Colorado from the potentially harmful effects of the regulated substances contained within AST systems. The purpose of this article is to present to owner/operators of AST systems a description of the minimum general standards for design, construction, location, installation and operation of these systems to be in compliance with these regulations and Colorado statutes. Further description of these requirements can be found in guidance documents, policies and procedures provided by the Director.

(a) The provisions in these regulations apply to all regulated substance AST systems unless specifically restricted to a specific system. It is the owner/operator's responsibility to ensure compliance with all requirements.

(1) Aside from meeting these regulatory requirements:

(i) All AST systems must meet local fire district rules, zoning rules, and requirements of other authorities having jurisdiction over AST systems.

(ii) C.R.S. § 8-20-231 requires that the design, construction, location, installation, and operation of all liquid fuel product tank systems greater than 60 gallons conform to the minimum standards prescribed by the applicable sections of NFPA fire code. This includes the testing and inspection requirements contained therein.

(2) For the purposes of these regulations, a tank's capacity is determined by the aggregate capacity of all individual primary tank compartments contained within the outer shell or structure of the tank, whether there is a shared bulkhead or not. Each compartment of an AST must meet the operational requirements contained herein individually (e.g. venting, overfill prevention, release detection, etc.)

Example: A single concrete-encased UL 2085 AST whose construction consists of two individual 500 gallon UL 142 ASTs wrapped in a polyethylene liner is considered as having a capacity of 1,000 gallons. Each compartment (tank) must be equipped to meet operational requirements

(b) Per C.R.S. § 8-20.5-101(2)(b), the following ASTs or AST systems are excluded from these AST regulations:

(1) Notwithstanding requirements listed in (a)(1) of this section, any AST whose capacity is greater than 39,999 gallons or less than 660 gallons;

(2) Any AST system that contains a de minimis concentration of regulated substances;

(3) Any AST systems containing radioactive material that are regulated under the Atomic Energy Act;

(4) Any AST system that is part of an emergency generator system at nuclear power generation facilities;

(5) ASTs used to store liquefied petroleum gases that are not liquid at standard temperature and pressure;

(6) ASTs used to store liquids whose fluidity is less than that of 300 penetration asphalt when tested in accordance with ASTM D 5.

- (7) A wastewater treatment tank system that is part of a wastewater treatment facility;
- (8) Equipment or machinery that contains regulated substances for operational purposes;
- (9) Farm and residential tanks or tanks used for horticultural or floricultural operations.
- (10) Aboveground storage tanks located at natural gas pipeline facilities that are regulated under state or federal natural gas pipeline acts;
- (11) Aboveground storage tanks associated with natural gas liquids separation, gathering, and production;
- (12) Aboveground storage tanks associated with crude oil production, storage, and gathering;
- (13) Aboveground storage tanks at transportation-related facilities regulated by the federal department of transportation;
- (14) Aboveground storage tanks used to store heating oil for consumptive use on the premises where stored
- (15) Aboveground storage tanks used to store flammable and combustible liquids at mining facilities and construction and earthmoving projects, including gravel pits, quarries, and borrow pits where, in the opinion of the Director, tight control by the owner or contractor and isolation from other structures make it unnecessary to meet the requirements of this article.

Section 3-2 AST System Design, Construction, Location and Installation

These performance standards apply to regulated AST systems that store stable liquids in atmospheric ASTs where internal operating pressures do not exceed 2.5 psi. Requirements for the storage of other liquids in other types of ASTs at greater operating pressures are found in NFPA 30, and must be followed.

3-2-1 Design

(a) Tank Design and Materials of Construction

- (1) All tanks shall be designed and built in accordance with recognized good engineering standards for the material of construction being used and shall be of steel or approved noncombustible material, with the following limitations and exceptions:
 - (i) The material of tank construction shall be compatible with the liquid to be stored. In case of doubt about the properties of the liquid to be stored, the supplier, producer of the liquid, or other competent authority shall be consulted.
 - (A) Tanks designed and intended for above ground use shall not be used as underground tanks.
 - (B) Tanks designed and intended for underground use shall not be used as aboveground tanks.
 - (ii) Tanks constructed of combustible materials shall be subject to the approval of the Director and limited to:
 - (A) Use where required by the properties of the liquid stored, or
 - (B) Storage of Class IIIB liquids above ground in areas not exposed to spill or leak of Class I or Class II liquid, or

(C) Storage of Class IIIB liquids inside a building protected by an approved automatic fire extinguishing system.

- (iii) Atmospheric tanks shall not be used for the storage of a liquid at a temperature at or above its boiling point. Atmospheric tanks shall be labeled and shall be built, installed, and used within the scope of a nationally recognized construction standard; such as U.L. 142, or API Standard 650, or an equivalent standard.

(b) Vent Piping

The design, fabrication, assembly, testing, and inspection of all piping systems for flammable and combustible liquids shall be in conformance with the applicable sections of ANSI B31, *American National Standard Code for Pressure Piping* and installed in conformance with the following requirements:

- (1) Where vent pipe outlets for tanks storing Class I liquids are adjacent to buildings or public ways, they shall be located so that the vapors are released at a safe point outside of buildings and not less than 12 ft (3.6 m) above the adjacent ground level. In order to aid their dispersion, vapors shall be discharged upward or horizontally away from closely adjacent walls. Vent outlets shall be located so that flammable vapors will not be trapped by eaves or other obstructions and shall be at least 5 ft (1.5 m) from building openings.

- (i) Vent piping that it is attached to or within a canopy or its supporting structure must extend a minimum of 5 ft (1.5 m) above the highest projection of the canopy, including the canopy fascia. When modifications to the canopy are made, this distance must be maintained.

Exception: Where the canopy or canopy modifications were installed before January 1, 2004, changes to existing vent piping are not required.

- (2) The manifolding of tank vent piping shall be avoided except where required for special purposes such as vapor recovery, vapor conservation, or air pollution control. When tank vent piping is manifolded, pipe sizes shall be such as to discharge, within the pressure limitations of the system, the vapors they may be required to handle when manifolded tanks are subject to the same fire exposure.

- (3) Vent piping for tanks storing Class I liquids shall not be manifolded with vent piping for tanks storing Class II or Class III liquids unless means are provided to prevent the vapors from Class I liquids from entering tanks storing Class II or Class III liquids, to prevent possible change in classification of the less volatile liquid.

(c) Normal Venting

- (1) Atmospheric tanks shall be adequately vented to prevent the development of vacuum or pressure that can distort or damage the tank or that exceeds the design pressure, as a result of filling or emptying the tank or atmospheric temperature changes.

- (2) For ASTs installed after September 30, 1994, normal vents shall be:

- (i) sized in accordance with American Petroleum Institute Standard No. 2000, Venting Atmospheric and Low-Pressure Storage Tanks, or another accepted standard; or

- (ii) at least as large as the filling or withdrawal connection, whichever is larger, but in no case less than 1 1/4 in. (3 cm) nominal inside diameter.

- (3) If any AST installed after September 30, 1994 has more than one fill or withdrawal connection and simultaneous filling or withdrawal can be made, the vent size shall be based on the maximum anticipated simultaneous flow.

- (4) Except for tanks containing Class III liquids, vents shall be equipped with venting devices.
 - (i) Tanks containing Class IA liquids shall be equipped with venting devices that are closed, except when venting under pressure or vacuum conditions.
 - (ii) Tanks containing Class IB and IC liquids shall be equipped with venting devices that are closed, except when venting under pressure or vacuum conditions, or with listed flame arresters.
 - (iii) Tanks containing Class II liquids shall be equipped with venting devices that will protect the tank against the intrusion of water, debris, or insects.
- (5) Adequate ventilation either natural or forced must exist to guarantee that flammable liquid vapors cannot build up to 25% of the lower flammable limit anywhere, because of the presence of the tank facility in question.

(d) Emergency Relief Venting

- (1) Every AST shall have some form of construction or device that will relieve excessive internal pressure caused by exposure to fires.
 - (i) This requirement shall also apply to each compartment of a compartmented tank, the interstitial space of secondary containment-type tanks, and the enclosed space of closed-top dike tanks, except where the tank was constructed prior to the publication of the 1996 edition of NFPA 30.

Exception: Tanks larger than 12,000 gallons capacity storing Class IIIB liquids do not require emergency relief venting unless they are within the diked area or the drainage path of Class I or Class II liquids.

- (2) In a vertical tank, the construction referred to in 3-2-1(d)(1) may take the form of a floating roof, lifter roof, a weak roof-to-shell seam, or other approved pressure-relieving construction. The weak roof-to-shell seam shall be constructed to fail preferential to any other seam. Design methods that will provide a weak roof-to-shell seam construction are contained in API 650, Welded Steel Tanks for Oil Storage, and UL 142, Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids.
- (3) Where entire dependence for emergency relief is placed upon pressure-relieving devices, the total venting capacity of both normal and emergency vents shall be enough to prevent rupture of the shell or bottom of the tank if vertical, or of the shell or heads if horizontal.
- (4) The total capacity of both normal and emergency venting devices shall not be less than the requirements of NFPA 30.
- (5) Emergency relief vent devices shall be vapor tight and shall be permitted to be a self-closing manway cover, a manway cover provided with long bolts that permit the cover to lift under internal pressure, or additional or larger relief valve or valves.
- (6) Each commercial tank venting device shall be stamped with the operational pressures and capacities required by NFPA 30.
- (7) For the extension of emergency vent piping, piping to or from approved emergency vent devices shall be sized to provide emergency vent flows that limit the back pressure to less than the maximum pressure permitted by the design of the tank.
- (8) The required emergency relief venting capacities for tanks and devices, requirements for tanks storing unstable liquids, additional requirements for tanks other than atmospheric, and other requirements for emergency relief venting design are found in NFPA 30.

(e) Tank Openings Other than Vents

- (1) Each connection to an AST through which liquid can normally flow shall be provided with an internal or an external valve located as close as practical to the shell of the tank.
- (2) Each connection below the liquid level through which liquid does not normally flow shall be provided with a liquid-tight closure. This may be a valve, plug, or blind, or a combination of these.
- (3) Openings for gauging on tanks storing Class I liquids shall be provided with a vapor-tight cap or cover. Such covers shall be closed when not gauging.
- (4) Fill pipes that enter the top of a tank shall terminate within 6 in (15 cm) of the bottom of the tank. Fill pipes shall be installed or arranged so that vibration is minimized.

Exception: Fill pipes in tanks whose vapor space, under normal operating conditions, is not in the flammable range need not meet this requirement.

- (5) Filling and emptying connections for Class I, Class II, and Class IIIA liquids that are made and broken shall be located outside of buildings at a location free from any source of ignition and not less than 5 ft. (1.5 m) away from any building opening. Such connections for any liquid shall be closed and liquid tight when not in use and shall be properly identified.

(f) Static Protection for all ASTs

(1) Grounding Required

All equipment such as tanks, machinery and piping, where an ignitable mixture may be present shall be bonded or connected to a ground.

(2) Bonding Facilities Required

The bond or ground or both shall be physically applied or shall be inherently present by the nature of the installation; and

- (i) Bonding facilities for protection against static sparks during the loading of tank vehicles through open domes shall be provided:

(A) Where Class I liquids are loaded, or

(B) Where Class II or Class III liquids are loaded into vehicles that may contain vapors from previous cargoes of Class I liquids; and

- (ii) Bonding facilities shall consist of a metallic bond wire permanently electrically connected to the fill stem, or to some part of the rack structure in electrical contact with the fill stem. The free end of such wire shall be provided with a clamp or equivalent device for convenient attachment to some metallic part in electrical contact with the cargo tank of the tank vehicle. (This can be a simple ground clamp used while loading).

(g) Standards for Piping, Valves, and Fittings

(1) General and Suction Systems.

- (i) For the purpose these regulations, piping connected to an AST is considered to be suction piping when the entire length of piping is at a higher elevation than the

AST it is connected to, and where there is no pump installed between the tank and piping. All other piping connected to an AST is pressurized piping.

- (A) ASTs with underground piping must meet **all** of the requirements for underground pressurized piping contained in Article 2 of these regulations, including the construction, corrosion protection, and installation requirements of 2-2-1 (b), the secondary containment requirements of 2-2-1(e) for piping installed after April 14, 2011, and release detection requirements of 2-3-4-3.
- (ii) Liquid shall not be dispensed from a tank by pressurization of the tank. Means shall be provided to prevent the release of liquid by siphon flow.
- (iii) On or after October 14, 2012, where an AST is at an elevation that produces a gravity head on a motor fuel dispensing device, the tank outlet shall be equipped with a device (such as a normally closed solenoid valve) that will prevent gravity flow from the tank to the dispenser. This device shall be located adjacent to and downstream of the main valve specified by 3-2-1(e)(1) of these regulations. The device shall be installed and adjusted so that liquid cannot flow by gravity from the tank to the dispenser in the event of failure of the piping or hose when the dispenser is not in use.
- (iv) Where a suction-type dispensing system includes a booster pump or where a suction-type dispensing system is supplied by a tank in a manner that produces a gravity head on the dispensing device, a listed, vacuum-actuated shutoff valve with a shear section or equivalent type valve shall be installed directly under the dispensing device.
 - (A) Suction-type dispensing systems installed before April 14, 2011 that include a solenoid valve at the tank outlet, and a listed, rigidly anchored emergency shutoff valve incorporating a fusible link or other thermally actuated device, designed to close automatically in event of severe impact or fire exposure are deemed to meet this requirement.
- (v) For ASTs installed after September 30, 1994, shutoff and check valves shall be equipped with a pressure-relieving device that will relieve the pressure generated by thermal expansion back to the tank.
- (vi) Piping shall be routed so that exposure to physical damage is minimized.
- (vii) Piping systems shall be supported and protected against physical damage, including damage from stresses arising from settlement, vibration, expansion, or contraction.

(2) Remote Pumping Systems

This section shall apply to systems for dispensing Class I liquids and Class II liquids where such liquids are transferred from storage to individual or multiple dispensing devices by pumps located other than at the dispensing devices.

- (i) Pumps shall be listed and designed or equipped so that no part of the system will be subjected to pressures above its allowable working pressure.
- (ii) Each pump shall have installed, on the discharge side, a listed leak detection device that will provide an indication if the piping and dispensers are not essentially liquid tight. Each leak-detecting device shall be checked and tested at least annually according to the manufacturer's specifications.

- (iii) Pumps installed above-grade and outside of buildings shall be located not less than 10 ft. (3 m) from lines of adjoining property that can be built upon and not less than 5 ft. (1.5 m) from any building opening. Pumps shall be substantially anchored and protected against physical damage.
- (iv) A listed rigidly anchored emergency shutoff valve, incorporating a fusible link or other thermally actuated device designed to close automatically in event of severe impact or fire exposure, shall be installed in accordance with the manufacturer's instructions in the supply line at the base of each individual island-type dispenser or at the inlet of each overhead dispensing device. An emergency shutoff valve incorporating a slip-joint feature shall not be used. The automatic closing feature of this valve shall be checked at the time of initial installation and at least once a year thereafter by manually tripping the hold-open linkage.
- (v) Any vapor return pipe inside the dispenser housing shall have a shear section or flexible connector so that the liquid emergency shutoff valve will function as described above.

(3) Breakaway devices

A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point shall be installed on each hose dispensing Class I and Class II liquids. Such devices are not required at marine service stations.

(h) Compatibility Requirements

Owners/operators must use an AST system made of or lined with materials that are compatible with the substance stored in the AST.

[Note: Owners/operators storing alcohol blends may use the following codes to comply with the requirements of this section: (a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and (b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Co-solvent Blends at Distribution Terminals and Service Stations."]

(i) Security

- (1) Where tanks are supported above the foundations, tank supports shall be installed on firm foundations. Steel supports or exposed piling supports for tanks storing Class I, Class II, or Class IIIA liquids shall be protected by materials having a fire resistance rating of not less than 2 hours.
- (2) Every tank shall be supported to prevent the excessive concentration of loads on the supporting portion of the tank shell.
- (3) The area within the fence (if applicable) and within any dike shall be kept free of vegetation, debris, and any other material that is not necessary to the proper operation of the tank and piping system.
- (4) After December 22, 1996, tanks that are not listed as UL 2085 Protected Tanks where fuel is dispensed into vehicles shall be protected against vehicular collision by suitable barriers, which may include buildings and open space which the Director approves in writing.
- (5) Tanks which are not enclosed in vaults shall be enclosed with a chain link fence at least 6 ft. high. The fence shall be separated from the tanks by at least 10 ft. and shall have a gate that is secured against unauthorized entry. This requirement applies to:

- (i) Tanks at motor fuel dispensing facilities, and

- (ii) Tanks at all other facilities that have an individual or aggregate capacity of 12,000 gallons or more.

Exception: Tanks are not required to be enclosed with a fence if the property on which the tanks are located has a perimeter security fence.

- (6) Tanks that are unsupervised for any period of time, or are located in isolated/remote areas, shall be secured and shall be marked to identify the fire hazards of the tank and the tank's contents to the general public. Where necessary to protect the tank from tampering or trespassing, the area where the tank is located shall be secured.
- (7) For ASTs installed after September 30, 1994, tank supports and foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion to any part of the tank.

3-2-2 Location and Installation

3-2-2-1 Service Stations (Motor Fuel Dispensing Facilities and Repair Garages)

After September 30, 1994, new ASTs may only be installed at service stations if they meet all the general requirements for ASTs, and the service station requirements of this section. After December 22, 1996, tanks designed and built for underground use shall not be used as ASTs. All of the provisions in this section also apply to marine service stations and airport service stations.

- (a) For ASTs installed after September 30, 1994, tanks storing Class I and Class II liquids at an individual site shall be limited to a maximum individual capacity of 12,000 gallons and an aggregate capacity of 48,000 gallons unless such tanks are installed in vaults complying with 3-2-2-5, in which case the maximum individual capacity shall be permitted to be 15,000 gallons.
- (b) For ASTs installed after September 30, 1994, and before April 14, 2011, tanks shall be located in accordance with Table 1 in this section, except that for secondary containment tanks, "fire tested" tanks, "fire resistant" tanks or tanks installed in a vault, the distance requirement from tank to dispenser is waived, provided that all tanks, pipes and dispensers are satisfactorily protected from vehicular traffic.
- (c) For ASTs installed on or after April 14, 2011, ASTs shall be located in accordance with Table 1 below.

TABLE 1		AST Separation at Motor Fuel Dispensing Facilities and Repair Garages				
		<i>Minimum Distance (ft)</i>				
<i>Type of Tank</i>	<i>Individual Tank Capacity (gal)</i>	<i>From Nearest Important Building on the Same Property</i>	<i>From Nearest Fuel Dispensing Device</i>	<i>From Property Line That Is or Can Be Built Upon Including Opposite Side of Public Way</i>	<i>From Nearest Side of Any Public Way</i>	<i>Between Tanks</i>
Tanks in vaults (measured from vault perimeter)	0 – 15,000	0	0	0	0	Separate vault compartments for each AST
Protected ASTs (UL 2085)	≤ 6,000	5	0	15	5	3
	6,001 – 12,000	15	0	25	15	3
Fire-resistant ASTs (UL 2080)	0 – 12,000	25	25	50	25	3
Other ASTs meeting NFPA 30 requirements	0 – 12,000	50	50	100	50	3

(d) Bulk Plants with Motor Fuel Dispensing.

This section does not include facilities that meet the requirements of 3-2-2-3.

(1) For facilities existing before April 14, 2011:

- (i) ASTs shall meet the location and installation requirements of 3-2-2-4.
- (ii) Where the 50 ft distance requirement from tank to dispenser is met, the following shall apply to the ASTs used for both motor fuel dispensing **and** bulk operations:

ASTs storing Class I liquids shall be limited to a maximum individual capacity of 12,000 gallons, ASTs storing Class II liquids shall be limited to a maximum individual capacity of 20,000 gallons, and the aggregate capacity for all tanks shall be 80,000 gallons.

[Note: There are no individual or aggregate capacity limits for ASTs used **solely** for bulk operations.]

- (iii) Where the 50 ft distance requirement from tank to dispenser is not met, the following shall apply to the ASTs used for both motor fuel dispensing **and** bulk operations:

ASTs storing Class I and Class II liquids shall be limited to a maximum individual capacity of 12,000 gallons, and an aggregate capacity of 48,000 gallons.

[Note: There are no individual or aggregate capacity limits for ASTs used **solely** for bulk operations.]

(2) For new facilities installed on or after April 14, 2011:

- (i) ASTs used for motor fuel dispensing shall meet the capacity and location requirements of 3-2-2-1, except that the maximum individual tank capacity of 12,000 gallons, indicated in Table 1, shall be permitted to be increased to 20,000 gallons for Class II liquids, and the aggregate capacity for all tanks shall be 80,000 gallons.

[Note: ASTs that are used for motor fuel dispensing shall not be used for bulk operations.]

- (ii) ASTs used for bulk operations shall meet the location and installation requirements of 3-2-2-4.

[Note: ASTs that are used for bulk operations shall not be used for motor fuel dispensing.]

- (3) ASTs used solely for bulk operations shall not be connected by piping to ASTs or USTs used for motor fuel dispensing, and shall not supply dispensing devices used for motor vehicle fueling.

Exception: Where the total capacity of all ASTs used for motor fuel dispensing and all ASTs used solely for bulk operations is within the aggregate capacities allowed by 3-2-2-1 (d)(1) (ii) or (iii), changes to connected piping are not required.

- (4) The motor fuel dispensing operations shall be separated from areas in which bulk plant operations are conducted by a fence or an approved structure (building, retaining wall, etc.), preventing direct access from one area to the other.

3-2-2-2 Governmental, Industrial and Commercial AST Facilities (Fleet Vehicle Motor Fuel Dispensing)

AST installations are permitted at commercial, industrial, governmental, and manufacturing facilities where motor fuels are dispensed into vehicles used in connection with their business by employees, but only under one of the following conditions:

- (a) For ASTs installed before April 14, 2011, existing restricted-capacity fleet vehicle motor fuel dispensing operations that meet the following requirements are allowed:
- (1) The facility has been inspected and approved by the Director;
 - (2) No more than two (2) ASTs are in service at the facility;
 - (3) No AST at the facility has a capacity greater than 6,000 U.S. gallons;
 - (4) There is not more than one (1) tank at the facility containing Class I liquids; and
 - (5) The spacing requirements of Table 2 below are met.

TABLE 2		AST Separation at Restricted-Capacity Fleet Motor Fuel Dispensing Facilities (Before April 14, 2011)			
		<i>Minimum Distance (ft)</i>			
<i>Tank Capacity (gal)</i>	<i>From Nearest Important Building on the Same Property</i>	<i>From Nearest Fuel Dispensing Device</i>	<i>From Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way</i>	<i>From Nearest Side of Any Public Way</i>	<i>Between Tanks</i>
660 - 750	5	0	10	5	3
751 - 6,000	5	0	15	5	3

- (b) On or after April 14, 2011, new restricted-capacity fleet vehicle motor fuel dispensing operations shall be allowed where the following requirements are met:
- (1) The requirements of 3-2-2-2(a)(1) – (4) are met; and
 - (2) The spacing requirements of Table 3 below are met.

TABLE 3		AST Separation at Restricted-Capacity Fleet Motor Fuel Dispensing Facilities (On or after April 14, 2011)			
		<i>Minimum Distance (ft)</i>			
<i>Tank Capacity (gal)</i>	<i>From Nearest Important Building on the Same Property</i>	<i>From Nearest Fuel Dispensing Device</i>	<i>From Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way</i>	<i>From Nearest Side of Any Public Way</i>	<i>Between Tanks</i>
660 – 2,000	25	0	50	25	3
2,001 - 6,000	25	0	75	35	3

- (c) For ASTs installed before April 14, 2011, if the AST system meets the requirements of 3-2-2-1(b) it can operate under the service station capacity allowances.
- (d) On or after April 14, 2011, fleet vehicle motor fuel dispensing operations shall be allowed where the following requirements are met:
- (1) The spacing requirements of Table 4 below are met.

- (i) The maximum individual tank capacity of 12,000 gallons, indicated in Table 4 below, shall be permitted to be increased to 20,000 gallons for Class II and Class III liquids, and the aggregate capacity for all tanks shall be 80,000 gallons; and
- (ii) No minimum separation shall be required between the dispensing device and a tank in a vault, a protected aboveground tank, or a fire-resistant tank.

TABLE 4		AST Separation at Fleet Motor Fuel Dispensing Facilities				
		<i>Minimum Distance (ft)</i>				
<i>Type of Tank</i>	<i>Individual Tank Capacity (gal)</i>	<i>From Nearest Important Building on the Same Property</i>	<i>From Nearest Fuel Dispensing Device</i>	<i>From Property Line That Is or Can Be Built Upon Including Opposite Side of Public Way</i>	<i>From Nearest Side of Any Public Way</i>	<i>Between Tanks</i>
Tanks in vaults (measured from vault perimeter)	0 – 15,000	0	0	0	0	Separate vault compartments for each AST
Protected ASTs (UL 2085)	≤ 6,000	5	0	15	5	3
	6,001 – 12,000	15	0	25	15	3
Fire-resistant ASTs (UL 2080)	0 – 12,000	25	0	50	25	3
Other ASTs meeting NFPA 30 requirements	0 – 12,000	50	50	100	50	3

3-2-2-3 Unattended Cardlock Systems

- (a) On or after April 14, 2011, unattended cardlock systems are those motor fuel dispensing facilities already in existence which are located at bulk plants, governmental, industrial, and commercial facilities where only proprietary cards (or keys) issued by the facility, and that are specific to the facility's fuel management or point of sale system, can be used to dispense fuel. Proprietary cards do not include cards that are available for regional or national fleet fueling.
 - (1) Cardlock systems installed before October 1, 1994 shall meet the AST separation distances of 3-2-2-4(a).
 - (2) Cardlock systems installed on October 1, 1994 or thereafter shall meet the AST separation distances of 3-2-2-4(a), and the tank-to-dispenser separation distances of 3-2-2-1(b).
 - (3) Persons that are issued proprietary cards (or keys) must be knowledgeable in site-specific operating and emergency procedures for dispensing operations.

3-2-2-4 Bulk Plants (And Other Facilities Without Motor Fuel Dispensing)

This section applies to ASTs storing regulated substances, including emergency generator tanks, outdoors at bulk plants and other facilities (except those facilities covered by 3-2-2-1) where there is no motor fuel dispensing.

The following requirements and tables showing required minimum separation distances apply to facilities in this section that store stable liquids in atmospheric ASTs where internal operating pressures do not exceed 2.5 psi. Requirements for the storage of other liquids in other types of ASTs at greater operating pressures are found in NFPA 30, and must be followed.

- (a) Every AST which is installed after September 30, 1994 and used for the storage of Class I, Class II, or Class IIIA stable liquids and operating at pressures not in excess of 2.5 psig (17.2 kPa) and designed with a weak roof-to-shell seam, or equipped with emergency venting devices that will

not permit pressures to exceed 2.5 psig (17.2 kPa), shall be located in accordance with Table 5 in this section. Where tank spacing is contingent on a weak roof-to-shell seam design, the user shall present evidence certifying such construction to the Director, upon request.

Exception: Vertical tanks with weak roof-to-shell seams that store Class IIIA liquids shall be permitted to be located at one-half the distances specified in Table 5, provided the tanks are not within the same diked area as, or within the drainage path of, a tank storing a Class I or Class II liquid.

- (b) Every AST which is installed after September 30, 1994 and used for the storage of Class I, Class II, or Class IIIA stable liquids and operating at pressures exceeding 2.5 psig (17.2 kPa) or equipped with emergency venting that will permit pressures to exceed 2.5 psig (17.2 kPa), shall be located in accordance with, and meet the requirements of NFPA 30.
- (c) Every AST which is installed after September 30, 1994 and used for the storage of liquids with boil-over characteristics shall be located in accordance with, and meet the requirements of NFPA 30.
- (d) Every AST which is installed after September 30, 1994 and used for the storage of unstable liquids shall be located in accordance with, and meet the requirements of NFPA 30.
- (e) For ASTs installed before April 14, 2011, spacing (Shell-to-Shell) between any two adjacent ASTs, where one AST is installed after September 30, 1994, with tanks storing Class I, II, or IIIA stable liquids shall be separated in accordance with Table 5 in this section.
- (f) On or after April 14, 2011, tanks used only for storing Class IIIB liquids shall not be required to be separated by more than 3 ft provided they are not within the same diked area as, or within the drainage path of, a tank storing a Class I or II liquid. If located within the same diked area as, or within the drainage path of, a tank storing a Class I or II liquid, the tank storing Class IIIB liquid shall be spaced in accordance with the requirements for Class IIIA liquids in Table 5.
- (g) Every AST which is installed after September 30, 1994 and used for the storage of Class IIIB stable liquids shall be located in accordance with Table 7 in this section.

Exception: If located within the same diked area as, or within the drainage path of, a tank storing a Class I or Class II liquid, the tank storing Class IIIB liquid shall be located in accordance with 3-2-2-4(a).

TABLE 5	Location of Atmospheric ASTs Storing Stable Liquids (Class I, II, IIIA) Internal Pressure Not to Exceed a Gauge Pressure of 2.5 psi			
		Minimum Distance (ft)		
Type of Tank	Protection	From Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way	From Nearest Side of Any Public Way or from Nearest Important Building on the Same Property	Minimum Tank Shell-to- Shell Spacing
Floating Roof	Protection for exposures	1/2 x tank diameter	1/6 x tank diameter	Greater of 1/6 x sum of adjacent tank diameters <u>or</u> 3 ft
	None	Tank diameter	1/6 x tank diameter	
Vertical with weak roof-to-shell seam	Approved foam or inerting system	1/2 x tank diameter	1/6 x tank diameter	Greater of 1/6 x sum of adjacent tank diameters <u>or</u> 3 ft
	Protection for exposures	Tank diameter	1/3 x tank diameter	
	None	2 x tank diameter	1/3 x tank diameter	
Horizontal and vertical tanks with emergency relief venting to limit pressures to 2.5 psi	Approved foam or inerting system	1/2 x value in table 6	1/2 x value in table 6	Greater of 1/6 x sum of adjacent tank diameters <u>or</u> 3 ft
	Protection for exposures	Value in table 6	Value in table 6	
	None	2 x value in table 6	Value in table 6	
Protected aboveground tank	None	1/2 x value in table 6	1/2 x value in table 6	Greater of 1/6 x sum of adjacent tank diameters <u>or</u> 3 ft
In most cases “protection for exposures” will apply.		Greater of values shown above <u>or</u> 5 ft		3 ft min. where sum of adjacent tank diameters is ≤ 18 ft
PROTECTION FOR EXPOSURES - Fire protection for structures on property adjacent to liquid storage that is provided by (1) a public fire department or (2) a private fire brigade maintained on the property adjacent to the liquid storage, either of which is capable of providing cooling water streams to protect the property adjacent to the liquid storage.				

TABLE 6	Distances for Use with Table 5 (Above)	
	Minimum Distance (ft)	
Tank Capacity (gal)	From Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way	From Nearest Side of Any Public Way or from Nearest Important Building on the Same Property
660 - 750	10	5
751 – 12,000	15	5
12,001 – 30,000	20	5
30,001 – 39,999	30	10

TABLE 7	Location of ASTs Storing Class IIIB Liquids	
	Minimum Distance (ft)	
Tank Capacity (gal)	From Property Line That Is or Can Be Built Upon, Including the Opposite Side of a Public Way	From Nearest Side of Any Public Way or from Nearest Important Building on the Same Property
12,000 or less	5	5
12,000 - 30,000	10	5
30,001 - 39,999	10	10

3-2-2-5 ASTs in Vaults

The provisions in this section apply only to ASTs installed after September 30, 1994.

- (a) There shall be no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank. The walls and floor of the vault shall be constructed of reinforced concrete at least 6 inches (15 cm) thick. The top shall be constructed of non-combustible material constructed to be weaker than the walls. The top, floor, and tank foundation shall be designed to withstand the anticipated loading. The vault shall be substantially liquid tight (able to contain the product for enough time until any release therein can be cleaned up) and there shall be no backfill material around the tank. There shall be sufficient space between the tank and vault to allow for inspection of the tank and its appurtenances.
- (b) Each vault and its tank shall be suitably anchored to withstand uplifting by groundwater or flooding, including when the tank is empty.
- (c) A vault shall be designed to be wind and earthquake resistant in accordance with good engineering practice. The vault shall be resistant to damage from the impact of a motor vehicle, or suitable collision barriers shall be provided.
- (d) Each tank shall be in its own vault. Adjacent vaults may share a common wall.
- (e) Connections shall be provided to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.
- (f) Vaults that contain tanks of Class I liquids shall be provided with continuous ventilation at a rate of not less than 1 cubic foot per minute per square foot of floor area ($0.3\text{m}^3/\text{min-m}^2$), but not less than 150 cfm ($4\text{m}^3/\text{min}$). Failure of the exhaust air flow shall automatically shut down the dispensing system. The exhaust system shall be designed to provide air movement across all parts of the vault floor. Supply and exhaust ducts shall extend to within 3 in. (7.6 cm), but not more than 12 in. (30.5 cm), of the floor. The exhaust system shall be installed in accordance with the provisions of NFPA 91, *Standard for Exhaust Systems for Air Conveying of Materials*. Means shall be provided to automatically detect any flammable vapors and to automatically shut down the dispensing system upon detection of such flammable vapors in the exhaust duct at or above a concentration of 25 percent of the lower flammable limit.
- (g) Each vault shall be equipped with a detection system capable of detecting liquids, including water, and of activating an alarm.
- (h) Means shall be provided to recover liquid from the vault. If a pump is used to meet this requirement, the pump shall not be permanently installed in the vault. Electric powered portable pumps shall be suitable for use in Class I, Division 1 locations, as defined in NFPA 70, National Electrical Code.
- (i) Vent pipes that are provided for normal tank venting shall terminate at least 12 ft. (3.6m) above ground level.
- (j) Emergency vents shall be vapor tight and shall be permitted to discharge inside the vault. Long-bolt manhole covers shall not be permitted for this purpose.
- (k) Each vault shall be provided with a means for personnel entry. At each entry point, a warning sign indicating the need for procedures for safe entry into confined spaces shall be posted. Each entry point shall be secured against unauthorized entry and vandalism.
- (l) Each vault shall be provided with a suitable means to admit a fire suppression agent.

- (m) The interior of any vault containing a tank that stores a Class I liquid shall be designated a Class I, Division 1 location, as defined in NFPA 70, *National Electrical Code*.

3-2-2-6 Tanks Inside Buildings

Exception: Tanks storing Class IIIB liquids need not comply with these provisions.

Tanks shall not be permitted inside of buildings unless the storage of liquids in outside aboveground or underground tanks is not practical because of government regulations, temperature considerations or production considerations. Tanks may be permitted inside of buildings or structures only when permitted by the Director and only under the following conditions:

- (a) ASTs installed after September 30, 1994 inside buildings shall be permitted only in areas at or above grade that have adequate drainage and are separated from other parts of the building by construction having a fire resistance rating of at least 2 hours. Day tanks, running tanks, and surge tanks are permitted in process areas. Class I, Class II and Class IIIA liquids that may be heated above their flash points shall not be stored in basements. Openings to other rooms or buildings shall be provided with noncombustible liquid tight raised sills or ramps at least 4 in. (10 cm) in height, or the floor in the storage area shall be at least 4 in. (10 cm) below the surrounding floor. As a minimum, each opening shall be provided with a listed, self-closing 1 1/2-hr (B) fire door installed in accordance with the current versions of NFPA 80, *Standard for Fire Doors and Fire Windows*; NFPA 90A *Standard for the Installation of Air Conditioning and Ventilating Systems*, or NFPA 91, *Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying*. The room shall be constructed without floor drains and with seals between walls and floor of the room in order to contain the product in case of leakage or spillage from the tank.
- (1) Secondary containment tanks do not remove the requirement for the raised sills or ramps at openings to other rooms or buildings, or lowered floor requirements described in (a) above. An open-grated trench across the width of the opening inside of the room that drains to a safe location shall be permitted to be used as an alternative to a sill or ramp.
- (2) The room shall be liquid tight where the walls join the floor and for at least 4 in. above the floor.
- (3) Access aisles of at least 3 ft. width shall be maintained for movement of firefighting personnel and fire protection equipment.
- (b) Each connection to a tank inside buildings through which liquid can normally flow shall be provided with an internal or an external valve located as close as practicable to the shell of the tank; and connections for all tank openings shall be liquid tight.
- (c) Tanks for storage of Class I or Class II liquids inside buildings shall be provided with either:
- (1) A normally closed remotely activated valve,
- (2) An automatic-closing heat-activated valve, or
- (3) Another approved device on each liquid transfer connection below the liquid level, except for connections used for emergency disposal, to provide for quick cutoff of flow in the event of fire in the vicinity of the tank. This function can be incorporated in the valve required in subsection (b) above and, if a separate valve, shall be located adjacent to the valve required in subsection (b).
- (d) Vents for tanks inside of buildings shall be as required in 3-2-1(c), 3-2-1(d), 3-2-2-5, except that emergency venting by the use of weak roof seams on tanks shall not be permitted. Vents shall terminate outside the buildings.

- (1) Section 3-2-1(c)(5) requires that adequate ventilation exist to guarantee that flammable liquid vapors cannot build up to 25% percent or more of the lower flammable limit, including inside buildings.
- (e) Vent piping shall be constructed and equipped as in 3-2-1(b) and 3-2-1(c).
- (f) Openings for manual gauging of Class I or Class II liquids, if independent of the fill pipe, shall be provided with a vapor tight cap or cover. Openings shall be kept closed when not gauging. Each such opening for any liquid shall be protected against liquid overflow and possible vapor release by means of a spring-loaded check valve or other approved device. Substitutes for manual gauging include, but are not limited to, heavy-duty flat gauge glasses, magnetic, hydraulic, or hydrostatic remote reading devices, and sealed float gauges.
- (g) The inlet of the fill pipe and the outlet of a vapor recovery line for which connections are made and broken shall be located outside of buildings at a location free from any source of ignition and not less than 5 ft. (1.5 m) away from any building opening. Such connections shall be closed and tight when not in use and shall be properly identified.
- (h) Tanks storing Class I, Class II, and Class IIIA liquids inside buildings shall be equipped with a device, or other means shall be provided to prevent overflow into the building. Suitable devices include, but are not limited to, a float valve, a preset meter on the fill line, a valve actuated by the weight of the tank contents, a low head pump incapable of producing overflow, or a liquid tight overflow pipe at least one pipe size larger than the fill pipe, discharging by gravity back to the outside source of liquid or to an approved location.
- (i) Tank openings provided for purposes of vapor recovery shall be protected against possible vapor release by means of a spring-loaded check valve or dry-break connections, or other approved device, unless the opening is pipe-connected to a vapor processing system. Openings designed for combined fill and vapor recovery shall also be protected against vapor release unless connection of the liquid delivery line to the fill pipe simultaneously connects the vapor recovery line. All connections shall be vapor tight.

3-2-2-7 Separation from Propane ASTs

- (a) The minimum horizontal separation between an LP-Gas container and a Class I, Class II or Class IIIA liquid storage tank installed after September 30, 1994 shall be 20 ft (6 m). When flammable or combustible liquids storage tanks are within a diked area, the LP-Gas containers shall be outside the diked area and at least 10 ft (3 m) away from the centerline of the wall of the diked area. For all tanks, suitable measures shall be taken to prevent the accumulation of Class I, Class II, or Class IIIA liquids under adjacent LP-Gas containers such as by dikes, diversion curbs, or grading.
- (b) Subsection (a) shall not apply when LP-Gas containers of 125 gal (475 L) or less capacity are installed adjacent to fuel oil supply tanks of 660 gal (2498 L) or less capacity. No horizontal separation is required between aboveground LP-Gas containers and underground flammable and combustible liquids tanks installed in accordance with UST rules.

3-2-3 Installation, Upgrade, and Repairs

- (a) Application for Permit for ASTs
- (1) An application must be submitted to and approved by the Director before beginning construction;
- (i) On any new or used/reinstalled AST system that will store a regulated substance; or
- (ii) Before beginning construction on any existing regulated substance AST system at a facility that is being upgraded to the standards described in these regulations or applicable statutes.

- (A) This requirement applies to alterations made to tanks, piping, or equipment affecting their operation, to containment (diking or impounding), and to the security provisions of 3-2-1(i)(5) or (6).

[Note: Where a tank will be moved from and returned to its original location in order to allow an alteration to its containment (e.g., changing from bare earthen diking to lined earth or concrete diking), or where a tank will be moved to a new location outside of its current footprint, a permanent closure must be performed in accordance with 3-4-2, and an application must be submitted for its reinstallation. For tanks installed before October 1, 1994 that will be moved from and returned to their original location, requests for variance from separation requirements of 3-2-2 that cannot be met must be made in writing at the time of application.]

(2) The application must include:

- (i) Site Plan - A dimensioned drawing of the facility, showing the name and address of the facility, the location of existing tanks and piping that will remain at the facility, as well as new tanks and piping proposed in the application, the location of dispensers and buildings at the facility, the location of loading/unloading facilities, the location of guard posts and fences, the location of property lines, and the location and names of streets adjacent to the facility; and
- (ii) A written application, using the form supplied by the Director, containing information about the proposed construction.

[Note: If a used AST will be installed/reinstalled, the requirements of 3-2-3(d) apply, and the results of the required inspections and testing must be submitted with the application.]

(b) AST Facility Inspections Required

- (1) Except in emergencies, if underground piping will be replaced or added to the AST system, the Director must be notified at least 72 hours prior to beginning the air pressure/soap solution test of the piping in order that an inspection of the system may be scheduled at that time. Emergency situations will be dealt with individually by the Director, possibly by delegation of the inspection.
- (2) The Director will make an inspection of the AST system, to verify that the facility was constructed according to plan. This inspection will be as detailed as practicable, but does not exempt the owner/operator from certifying that the installation was made according to all the requirements of these regulations. The owner/operator shall provide the Director with a 72 hour notice prior to the filling of the tank system.

(c) Denial or Revocation of Permit

- (1) An AST permit application may be denied or revoked if the AST installation or operation is not in conformance with these AST regulations or is not in conformance with all applicable sections of the National Fire Protection Association codes.
- (2) An AST permit may be denied or revoked if the AST permit application is not complete or is determined to be inaccurate.
- (3) An AST permit may be revoked if the AST installation or operation is not in conformance with the NFPA Codes in effect at the time of installation, and may be revoked for misrepresentation of facts in the application.

- (4) An AST permit may be revoked if an inspection by the Director reveals that the construction performed is not in accordance with the installation plan submitted for approval; and may be revoked for failure to meet the operating or fire safety rules established by these regulations or established by the various provisions of the NFPA Codes that apply to the AST facility.
- (5) An AST system permit is automatically revoked six months after the date of issue unless the Director grants an extension in writing.
- (6) Six months or later, after an AST permit is issued, the permit may be modified by subsequent statutory or regulatory changes.

(d) Reinstallation of ASTs

- (1) Used ASTs being installed to store a regulated substance must meet the following requirements:
 - (i) The AST itself must meet all of the fabrication, construction and performance requirements, and be equipped with all of the required equipment listed in 3-2 of these regulations.
 - (ii) The tank must be inspected per 3-3-4-2, and manufacturer reinstallation/relocation requirements.
 - (iii) The AST installation and registration requirements of 3-2-3 and 3-2-4.
 - (iv) Emergency relief vent devices must be tested and certified to be in good working order.

(e) Upgrading AST Systems

The deadlines for the upgrading of AST systems that existed prior to AST regulations being promulgated have expired. This section remains in this revision for historical reference.

- (1) On or before December 22, 1996, AST systems must meet the requirements of these regulations or permanently close the tanks in accordance with these regulations. The following requirements take effect December 22, 1996:
 - (i) Each AST must be sound and have an emergency relief venting device which is equivalent to those described in these regulations. The owner/operator is required to provide proof that the tank meets this requirement.
 - (ii) Secondary containment methods or devices must be provided and in regular use at the facility as described in 3-3-1.
 - (iii) The facility must meet the security requirements of 3-2-1(i).
- (2) By December 22, 1998 certain AST systems must be equipped with a solenoid valve or a vacuum-actuated shutoff valve, with a shear section as described in 3-2-1(g).

[Note: In applying these requirements, the following quotation will be carefully considered by the Director - "Existing plants, equipment, buildings, structures, and installations for the storage, handling or use of flammable or combustible liquids that are not in strict compliance with the terms of this code may be continued in use at the discretion of the Director provided they do not constitute a recognized hazard to life or adjoining property. The existence of a situation that might result in an explosion or sudden escalation of a fire, such as inadequate ventilation of confined spaces, lack of adequate emergency

venting of a tank, failure to fireproof the supports of elevated tanks, or lack of drainage or dikes to control spills, may constitute such a hazard."]

(f) Repairs Allowed

- (1) If an AST system is damaged, it must be repaired to meet applicable requirements, or be properly closed. Owners/operators of AST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the AST system is used to store regulated substances.
- (2) The repairs must meet the following requirements:
 - (i) Repairs to AST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory. [Note: The following codes and standards may be used to comply with this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"];]
 - (ii) Above ground metal pipe that has released product must be immediately repaired or replaced and appropriately tested. [Note: repaired piping that has previously contained flammable liquid must not be subjected to an air pressure test unless the piping has been completely cleaned and rendered vapor free]
 - (iii) Underground metal pipe sections and fittings connected to an AST that have released product as a result of corrosion or other damage must be replaced immediately and protected from future corrosion. Fiberglass pipes and fittings may be repaired in accordance with the equipment manufacturer's specifications.
 - (iv) Repaired AST underground piping must be tightness tested in accordance with 2-3-4-3(a)(2)(i) within 30 calendar days following the date of the completion of the repair. New replacement piping runs that have never contained product may be tested by an air pressure/soap bubble test at 1.5 times operating pressure if inspected and approved by the Director.
- (3) If a release of regulated substance is identified during repairs to AST system equipment, the owner/operator shall report the release according to Article 4.

3-2-4 AST System Registration and Transfer of Ownership

(a) Registration and Notification for ASTs.

- (1) AST Registration Required. All ASTs and facility data must be registered, re-registered or updated on a form provided by the Director, regardless of whether the ASTs and facilities are currently in service or in temporary closure, according to the following provisions:
 - (i) The registration form must be filled out as completely as possible by the owner/operator of the AST; and must include each tank owned or operated at the facility.
 - (ii) Owners/operators may provide notice for several tanks at a single facility using one notification form, but owners/operators who own or operate tanks located at more than one facility must file a separate notification form for each separate facility.

- (2) **Registration Timing.** Each owner/operator of an AST must register each AST with the Director as follows:
- (i) By July 1, 1993 if the tanks were not registered previously.
 - (ii) Within 30 calendar days after the first day on which any AST is actually used to contain a regulated substance.
 - (iii) This registration information must be updated within 30 calendar days after any additional tank construction, AST system upgrading, temporary or permanent closure, or changes in operation including a change of owner or operator, has been completed.
 - (iv) This registration must be renewed annually during the month designated by the Director, and during the same month in each succeeding year thereafter.
- (3) **Registration Fee Required.** The owner/operator is required to pay an annual registration fee in the amount allowed by the current state law for each regulated tank owned or operated, until the regulated AST is permanently closed as in 3-4-2 or until the owner/operator has instituted a change-in-service to a substance other than a regulated substance as in 3-4-3.
- (4) **Tank Vendor Responsibility.** Any person who sells a tank intended to be used as an AST must notify the purchaser of such tank of the purchaser's registration and registration fee obligations under this section.

Section 3-3 Operation

3-3-1 Spill and Overfill Protection

(a) General Requirements

- (1) After December 22, 1996, facilities shall be provided so that any accidental discharge of any Class I, II or IIIA liquids will be prevented from endangering important facilities, and adjoining property, or reaching waterways, as provided for in subsections (b) or (c) except that tanks storing Class IIIB liquids do not require special drainage or diking provisions for fire protection purposes.
- (2) Owners/operators of ASTs must ensure that releases due to spilling or overfilling do not occur. The owner/operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made; and that the transfer operation is monitored constantly to prevent overfilling and spilling.
 - (i) Where electronic or mechanical gauges are used for determining tank volume (ground-level tape gauges, clock face gauges, etc.), the gauge shall be calibrated annually, per manufacturer instructions. These calibrations shall be documented and maintained.
- (3) Spill and overfill prevention equipment is required for all ASTs installed after September 30, 1994. Means shall be provided for determining the liquid level in each tank and be accessible to the delivery operator. Specifically, for all ASTs installed after September 30, 1994 at service stations, and for all secondary containment type tanks without diking or impounding protection, the equipment shall automatically stop the delivery of liquid to the tank when the liquid level in the tank reaches 95 percent of capacity or sound an audible alarm when the liquid level in the tank reaches 90 percent of capacity.
- (4) Delivery operations shall comply with the following requirements:

- (i) The delivery vehicle shall be separated from any AST by at least 25 ft. (7.6 m) for class I liquids and by at least 15 ft. for class II and class III liquids, measured from the nearest fill spout or transfer connection.
 - (ii) Tank filling shall not begin until the delivery operator has determined tank ullage (available capacity) based on direct liquid level measurement converted to gallons or some equivalent method.
 - (A) Where spill and overfill prevention equipment that will automatically stop the delivery of liquid to the tank or sound an audible alarm that can be heard by the delivery operator described in 3-3-1-(a)(3) does not exist, tank ullage and the amount of product delivered must be documented and maintained.
 - (iii) For ASTs installed after September 30, 1994, a check valve and a shutoff valve with a quick-connect coupling or a check valve with a dry-break valve shall be installed in the piping at a point where connection and disconnection is made for delivery from the bulk delivery vehicle to the AST. This device shall be protected from tampering and physical damage.
- (5) The owner/operator must report, investigate, and clean up any spills and overfills in accordance with Articles 4 and 5 of these Regulations.

(b) Remote Impounding.

Where protection of adjoining property or waterways is by means of drainage to a remote impounding area, so that impounded liquid will not be held against tanks, such systems shall comply with the following:

- (1) A slope of not less than 1 percent away from the tank shall be provided for at least 50 ft. toward the impounding area.
- (2) The impounding area shall have a net capacity not less than that of the largest tank that can drain into it plus an allowance for precipitation.
- (3) The route of the drainage system shall be so located that, if the liquids in the drainage system are ignited, the fire will not seriously expose tanks or adjoining property.
- (4) The confines of the impounding area shall be located so that, when filled to capacity, the liquid level will not be closer than 50 ft. from any property line that can be built upon, or from any tank.

(c) Impounding Around Tanks by Diking

Exception: Size and spacing requirements for dikes enclosing existing ASTs may be reduced or waived by the Director if he determines that there are equivalent safety measures at the facility.

When protection of adjoining property or waterways is by means of impounding by diking around the tanks, such system shall comply with the following:

- (1) For ASTs installed after September 30, 1994, a slope of not less than 1 percent away from the tank shall be provided for at least 50 ft. or to the dike base, whichever is less.
- (2) After December 22, 1996, the volumetric capacity of the diked area shall not be less than the greatest amount of liquid that can be released from the largest tank within the diked area, assuming a full tank. To allow for volume occupied by tanks, the capacity of the diked area enclosing more than one tank shall be calculated after deducting the volume of the tanks, other than the largest tank, below the height of the dike.

- (3) For ASTs installed after September 30, 1994, to permit access, the outside base of the dike at ground level shall be no closer than 10 ft. to any property line that is, or can be, built upon.
- (4) After December 22, 1996, walls of the diked area shall be of non-permeable earth, steel, concrete, or solid masonry designed to be liquid tight and to withstand a full hydrostatic head for enough time until any release therein can be cleaned up. For all AST dikes installed after September 30, 1994, the floor of the diked area must be impervious enough to contain the product for enough time until any release therein can be cleaned up. Earthen walls 3 ft. or more in height shall have a flat section at the top not less than 2 ft. wide. The slope of an earthen wall shall be consistent with the angle of repose of the material of which the wall is constructed. Diked areas for tanks containing Class I liquids located in extremely porous soils may require special treatment to prevent seepage of hazardous quantities of liquids to low-lying areas or waterways in case of spills.
- (5) Except as provided in subsection (6) below, the walls of the diked area shall be restricted to an average interior height of 6 ft. above interior grade.
- (6) Dikes may be higher than an average of 6 ft. above interior grade where provisions are made for normal access and necessary emergency access to tanks, valves, and other equipment, and safe egress from the diked enclosure.
 - (i) Where the average height of the dike containing Class I liquids is over 12 ft high, measured from interior grade, or where the distance between any tank and the top inside edge of the dike wall is less than the height of the dike, provisions shall be made for normal operation of valves and access to tank roof without entering below the top of the dike. These provisions may be met through the use of remote-operated valves, elevated walkways, etc.
 - (ii) Piping passing through dike walls shall be designed to prevent excessive stresses as a result of settlement or fire exposure.
 - (iii) For ASTs installed after September 30, 1994, the minimum distance between tanks and toe of interior dike walls shall be 5 ft.
- (7) Where provision is made for draining water from diked areas, such drains shall be controlled in a manner so as to prevent flammable or combustible liquids from entering natural water courses, public sewers, or public drains. Control of drainage shall be accessible under fire conditions from outside the dike.
- (8) Storage of combustible materials, empty or full drums, or barrels, shall not be permitted within the diked area.
- (d) Secondary Containment Tanks may be installed without special drainage or diking if they are constructed to meet all the following requirements:
 - (1) The capacity of the tank shall not exceed 12,000 gallons for Class I liquids or 20,000 gallons for Class II and IIIA liquids; and
 - (2) All piping connections to the tank are made above the normal maximum liquid level; and
 - (3) Means are provided to prevent the release of liquid from the tank by siphon flow; and
 - (4) The outer tank must contain a release from any portion of the inner tank within the outer wall; and
 - (5) For ASTs installed after September 30, 1994, spacing between adjacent tanks shall be not less than three (3) feet (0.9 M); and

- (6) Tanks that are not listed as UL 2085 Protected Tanks must be protected from collisions as described in 3-2-1(i); and
- (7) The system must prevent spills by being equipped with:
 - (i) A check valve and a shutoff valve with a quick-connect coupling or a check valve with a dry-break valve which is installed in the piping at a point where connection and disconnection is made for delivery from the vehicle to any AST; or
 - (ii) If the delivery hose is connected directly to the tank, the fill line at the tank shall be equipped with a tight-fill device for connecting the hose to the tank to prevent or contain any spill at the fill opening during delivery operations; and
- (8) ASTs must prevent overfills by means of equipment that will shut off liquid flow to the tank when the liquid level in the tank reaches 95% of capacity or sound an audible alarm when the liquid level in the tank reaches 90% of capacity.
- (e) Secondary containment areas must be maintained free of accumulations of water, leaves, weeds, flammable material, non U.L. listed tanks or drums, and anything else that might interfere with the containment purpose of such areas.

3-3-2 Corrosion Protection

- (a) Internal Corrosion Protection For ASTs Installed After September 30, 1994.

When ASTs installed after September 30, 1994, are not designed in accordance with the American Petroleum Institute, American Society of Mechanical Engineers, or the Underwriters Laboratories Inc. Standards, or if corrosion is anticipated beyond that provided for in the design formulas used, additional metal thickness or suitable protective coatings or linings shall be provided to compensate for the corrosion loss expected during the design life of the tank.

- (b) External Corrosion Protection for ASTs installed after September 30, 1994.

For those portions of an AST system installed after September 30, 1994, including the product pipelines that normally contain regulated substances and are in contact with the soil or with an electrolyte that may cause corrosion of the AST system, tanks and piping must be protected by either:

- (1) A properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:
 - (i) National Association of Corrosion Engineers Standard RP-01-69, *"Control of External Corrosion of Underground or Submerged Metallic Piping Systems"* ;
 - (ii) National Association of Corrosion Engineers Standard RP-02-85, *"Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"* ; or;
- (2) Approved or listed corrosion-resistant materials or systems, which may include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

- (c) External Coating of all Elevated Tanks.

For installations where tanks and piping are not in contact with soil or with an electrolyte, corrosion protection may consist of an appropriate external coating.

- (d) Cathodic Protection Requirements.

Owners/operators must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as a cathodically protected AST system is used to store regulated substances:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
 - (2) Performance criteria - The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.
 - (3) Periodic Inspections - AST systems with impressed current cathodic protection systems must be inspected every 60 calendar days to ensure that the equipment is running properly.
- (e) Tanks that are not cathodically protected must be tested within 5 years after October 1, 1994; and once every two years thereafter by either;
- (1) An external visual inspection, that includes the bottom of the tank, for corrosion or other visible damage; or
 - (2) A leakage test of any type approved by the Director; or
 - (3) An internal inspection for corrosion or other visible damage; or
 - (4) Comply with some other alternative test for corrosion or leakage as specified by and approved by the Director in the future.

3-3-3 Release Detection

- (a) General Requirements for all AST Systems.
- (1) ASTs that are not in contact with the ground or any electrolyte that might cause corrosion of the tank must be visually inspected at least once per month by operating personnel to detect any leakage from tank seams, connections, and fittings, including piping. Any such leakage must be repaired immediately and reported under the repair and reporting requirements of these regulations.
 - (2) ASTs, including metal supporting structures, that are in contact with the soil or that are in contact with an electrolyte that may promote corrosion of the tank must be inspected as in subsection (1) above and be protected from corrosion or tested periodically to prove that they are not seriously corroded, as described in 3-3-2(e).
 - (3) AST system piping that is not in contact with the soil or with an electrolyte that might cause corrosion of the piping must be inspected at least once each month to detect leakage from pipe seams, connections, and fittings. Any such leakage that may exceed the reportable quantity (25 gallons) must be repaired immediately and reported as in Article 4.
 - (4) Underground AST piping shall meet the release detection requirements in 2-3-4-3.
 - (i) Pressurized piping described in 3-2-1 (g)(1)(i) shall meet the release detection requirements (automatic leak detector and line tightness testing) in 2-3-4-3(a), except that where there is no pump installed between the tank and underground piping, the requirement for an automatic line leak detector in 2-3-4-3(a)(1) does not apply.

(ii) Suction piping described in 3-2-1(g)(1)(A) shall meet the release detection requirements in 2-3-4-3(b).

(5) Inventory control shall be performed and documented for all single-wall ASTs installed on earthen materials, and all ASTs connected to underground pressurized piping that is not being monitored for releases in accordance with 2-3-4-3(a)(2)(ii). Accurate daily inventory records shall be maintained and reconciled for all applicable storage tanks.

(b) Release Detection for Secondary Containment Tanks

Secondary Containment tanks that are installed without special drainage or diking according to 3-3-1(b) or (c) must be visually inspected at least once each month to ensure that there has been no failure of the outer wall of the secondary containment tank. An interstitial liquid detector or some other positive means of leak detection must be installed to detect leaks from the inner wall of the tank; and operation of that leak detector must be verified at least monthly. A record of the inspection must be maintained [See § 3-3-5].

(c) All AST system tank and piping fittings, connections, valves, auxiliary equipment that contains product, secondary containment areas, etc. must be maintained free of obstructions that would interfere with visual detection of leaks and spills.

3-3-4 Testing and Compliance Inspections

3-3-4-1 Testing

(a) Initial Testing

(1) All new ASTs shall be tested before they are placed in service in accordance with the requirements of the standard or code under which they were built.

(i) An AST marked with an approved listing is considered to be in compliance with this requirement, as the testing is part of the standard to which it was constructed. Tanks not marked with an approved listing shall be tested before they are placed in service in accordance with recognized engineering standards.

(b) Tightness Testing

(1) In addition to the initial testing of 3-3-4-1(a), all new and used tanks and connections shall be tested for tightness after installation/reinstallation and before being placed in service in accordance with manufacturer instructions, or NFPA 30 where no manufacturer instructions exist. This test shall be made at operating pressure with air, inert gas, or water.

(i) Air pressure shall not be used to test tanks that contain flammable or combustible liquids or vapors.

(ii) Where the vertical length of the fill and vent pipes is such that, when filled with liquid, the static head imposed on the bottom of the AST exceeds a gauge pressure of 10 psi, the tank and its related piping shall be tested hydrostatically to a pressure equal to the static head, using recognized engineering standards. Under no circumstances should the test pressure exceed the design pressure of the AST.

3-3-4-2 Inspections

(a) All steel ASTs shall be inspected and maintained in accordance with STI SP001, *Standard for the Inspection of Aboveground Storage Tanks*, or API Standard 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, whichever is applicable.

(b) Monthly Visual Inspections

The owner/operator must conduct visual inspections of the tank system each month and document the results of the inspection on a form provided by the Director or on an equivalent form. These monthly visual inspections satisfy the requirements described in 3-3-3 (a)(1) through (3).

(c) Annual Visual Inspections

(1) Annual inspections of all steel ASTs shall be performed, documented, and retained according to the requirements of STI SP001.

(i) This inspection does not include ultrasonic testing (UT), and can be performed by an individual knowledgeable of storage facility operations, the type of AST and its associated components, and characteristics of the liquid stored.

(ii) Annual inspections shall be performed within 12 months after April 14, 2011, and during the same month in each year thereafter.

(d) Periodic Inspections

(1) External and internal inspections, and leak testing, shall be performed and documented according to the requirements of the standard being followed.

(i) These inspections shall be performed by inspectors meeting the qualifications required by the standard being followed.

(ii) The applicability and frequency of these inspections is determined by the AST type, capacity, type of installation, corrosion rate, inspection history, and standard being followed according to guidance provided by OPS.

(iii) For any new or used AST being installed, and all existing ASTs, the first inspections and testing required by this subsection are due as indicated in Table 8 below.

[Note: For Table 8, inspection frequency shall be determined based on the requirements in the selected inspection standard listed in (c)(1).]

TABLE 8		First External and Internal Inspections, and Leak Testing Due			
Type of AST		Age of AST	Previous inspections conducted?	Re-inspection due date is exceeded ?	The inspection is due
AST Installations	New	at the time of installation is new	No	N/A	when the age of the AST = the inspection frequency
	Used	at the time of installation is \leq the inspection frequency	Yes	Yes	before installation **
	Used	at the time of installation is \leq the inspection frequency	Yes **	No	re-inspect per subsection (iv) below
	Used	at the time of installation is \leq the inspection frequency	No	N/A	when the age of the AST = the inspection frequency
	Used	at the time of installation is $>$ the inspection frequency	Yes	Yes	before installation **
	Used	at the time of installation is $>$ the inspection frequency	Yes **	No	re-inspect per subsection (iv) below
	Used	at the time of installation is $>$ the inspection frequency	No	N/A	before installation **
Existing		on 10/14/2012 is \leq the inspection frequency	Yes	Yes	before 10/14/2012
Existing		on 10/14/2012 is \leq the inspection frequency	Yes	No	re-inspect per subsection (iv) below
Existing		on 10/14/2012 is \leq the inspection frequency	No	N/A	when the age of the AST = the inspection frequency
Existing		on 10/14/2012 is $>$ the inspection frequency	Yes	Yes	before 10/14/2012
Existing		on 10/14/2012 is $>$ the inspection frequency	Yes	No	re-inspect per subsection (iv) below
Existing		on 10/14/2012 is $>$ the inspection frequency	No	N/A	before 10/14/2012

****A copy of the inspection report must be included with the installation application required by 3-2-3(a).**

(iv) Re-inspection of all ASTs shall occur in the same month as the previous inspection, during the next inspection year established by the applicable inspection frequency.

(e) The Director shall have authority to enter in or upon the premises of any facility that contains an AST system containing a regulated substance, for the purpose of verifying that such AST system and its required records are in compliance with these regulations.

3-3-5 Record Keeping

(a) Owners/operators must maintain the following records for an AST site as applicable:

- (1) Installation permits for newly installed tanks, reinstalled used tanks or permits for upgrading existing tanks must be maintained for 5 years.
- (2) Tank registration records or record of facility ID number retained until closure.
- (3) Records of repairs that have been performed within the last 5 years.
- (4) Monthly and annual visual inspection records of the AST system must be kept for one year. Formal inspection reports and supporting documents shall be retained for the life of the tank.
- (5) Most recent underground piping precision test records must be maintained.
- (6) Records showing the history of each AST in terms of which Class and type of product has been stored in that tank, shall be maintained for at least one year.
- (7) Electronic/mechanical tank gauge calibration documentation required by 3-3-1(a)(2)(i) must be kept for one year.

- (8) Tank ullage documentation required by 3-3-1(a)(4)(ii)(A) must be kept for one year.
- (9) Inventory control records required by 3-3-3(a)(5) must be kept for one year.
- (10) Free product removal records must be maintained to document proper operation following any release of product within the last five years.
- (11) Records showing the changes in status of tanks that have been temporarily closed at times then returned to service, should be maintained for at least two (2) years. Records need not be kept for tanks that have been permanently closed.
- (12) Records of the operation of the cathodic protection system including results of 60-day inspection as required in 3-3-2 (d)(3).
- (b) Records must be maintained at the AST site and immediately available for inspection by the Director; or at a readily available alternative site and be provided for inspection within 24 hours to the Director upon request.
- (c) Notwithstanding the above, to be eligible for the Fund, persons may be required to maintain the above or other records in accordance with Fund requirements.

Section 3-4 Closure of AST Systems

3-4-1 Temporary Closure

- (a) Owners/operators shall notify the Director in writing at least 10 calendar days prior to placing an AST system in temporary closure, and at that same time submit records documenting the prior 12 months of monthly visual inspections, inventory control, ullage records, piping release detection records, and corrosion protection testing (if applicable) for tanks and piping. In lieu of submitting these records, the owner/operator may conduct a tightness test of the tanks and underground piping, and complete a site assessment as required by the Director, and submit these results with the temporary closure notification.
- (b) Temporarily closed tanks must be emptied of liquid, rendered vapor free and safeguarded against trespassing by means of locked gates, fences etc. When an AST system is temporarily closed, owners/operators must continue the operation, maintenance, inspection, and testing of corrosion protection in accordance with these regulations. Because the tanks must be emptied, release detection is not required.
- (c) When an AST system is temporarily closed, vent lines must be left open and functioning. If the temporary closure period is 3 months or more, all pumps, manways, ancillary equipment and lines other than vent lines must be capped and secured, unless an alternate schedule is approved by the Director.
- (d) When an AST system is temporarily closed for more than 12 months, owners/operators must permanently close the AST system in accordance with 3-4-2, unless the Director provides a written extension of the 12-month temporary closure period. Before requesting this extension, owners/operators must complete a site assessment as required by the Director.
- (e) Owner/operators shall notify the Director in writing no more than 30 calendar days prior to placing an AST back in service, and at that same time submit corrosion protection records (if applicable) for the period of temporary closure, and documentation of passing tightness tests for the AST conducted within the past 30 calendar days. The owner/operator shall obtain passing tightness tests for underground lines immediately upon introduction of fuel into the lines and submit documentation of testing to the Director within 10 calendar days.

- (f) If an owner/operator operates a facility which has a specific period of time or season during the year when the tank system is empty, as described in (b) of this section, the requirements for maintaining corrosion protection and the following requirements below will apply:
- (1) The owner/operator shall notify the Director that the facility does include seasonal operation on a form provided by the Director. If this information changes, the owner/operator shall complete and submit the form to the Director.
 - (2) The period may not exceed 6 consecutive months.
 - (3) The owner/operator shall maintain manifest documentation completed during emptying of the tank.
 - (4) At the end of the seasonal period, the owner/operator must conduct one of the following actions:
 - (i) Return the tank to service.
 - (ii) Place the tank into proper temporary closure. The owner/operator must notify the Director in writing within 10 calendar days, submit records according to (a) as applicable and complete requirements in (c) immediately.
 - (iii) Permanently close the tank as required by 3-4-2.

3-4-2 Permanent Closure

- (a) Owners/operators shall notify the Director in writing at least 10 calendar days prior to placing an AST system in permanent closure, and at that same time submit records documenting the prior 12 months of monthly visual inspections, inventory control, ullage records, piping release detection records, and corrosion protection testing (if applicable) for tanks and piping.

Exception: Records do not need to be submitted where they have already been submitted as part of placing the tank into temporary closure as required by 3-4-1.

- (b) Empty and clean the tank by removing all liquids and accumulated sludges as described in 3-4-5; and
- (c) Clean out and plug both ends of all connected piping; and
- (d) Remove all dispensers; and
- (e) Render all connected loading facilities completely inoperative; and
- (f) Safeguard the AST system from trespassing as described in 3-4-1, or remove the tanks from the facility; and

3-4-3 Change in Service

- (a) Continued use of an AST system to store a substance other than a regulated substance is considered a change-in-service. Before a change-in-service, owners/operators must empty and clean the tank, connected piping, and any other equipment that previously contained a regulated substance as described in 3-4-5; then notify the Director in writing of the change of service.

3-4-4 Site Assessment

- (a) Before an extension to temporary closure, permanent closure or a change-in-service is completed, or upon request by the Director for previously closed sites, owners/operators must measure for the presence of a release where contamination is most likely to be present at the site. In selecting sample types, sample locations, and measurement methods, owners/operators must consider the

method of closure, the nature of the stored substance, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

- (1) For assessments when the tank system is removed during permanent closure, the owner/operator must collect soil samples from beneath each tank, beneath each dispenser island, beneath areas of piping, and beneath any loading racks.
 - (2) For assessments when the tank system is left in-place during permanent closure, prior to placing the tank into temporary closure, or when there is a change-in-service, the owner/operator shall collect samples of the type and at locations as specified by the Director. Samples collected at all sites must be analyzed for individual chemicals of concern (COC) as described in 5-2.
- (b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, owners/operators must report a release in accordance with Article 4.
- (c) If the tank closure assessment does not identify a release, the owner/operator must submit documentation of the assessment to the Director within 30 calendar days of the tank closure.

[Note 1: Permanently closed or non-regulated ASTs may be returned to active regulated substance service only after meeting the reinstallation rules described in 3-2-3(d).]

[Note 2: These closure rules are the minimum required in Colorado; they do not preempt local fire district rules, local building codes, or local zoning rules. In fire districts where the Uniform Fire Code is in effect, the fire district may require that temporarily closed ASTs be removed or demolished.]

[Note 3: The following procedures may be used to comply with 3-4:

- (A) American Petroleum Institute Publication 2015, "*Cleaning Petroleum Storage Tanks*";
- (B) American Petroleum Institute Publ. 2015A, "*Lead Hazard Associated with Tank Entry*";
- (C) American Petroleum Institute 2015B, "*Cleaning Open Top and Floating Roof Tanks*";
- (D) National Institute for Occupational Safety and Health "*Criteria for a Recommended Standard...Working in Confined Space*" may be used as guidance for conducting safe closures.]

3-4-5 Waste Handling

- (a) All liquids and accumulated sludges must be removed and disposed of according to the rules adopted pursuant to the Solid Waste Disposal Regulations and the Colorado Hazardous Waste Regulations adopted by the Colorado Department of Public Health and Environment.

Section 3-5 Oil Pollution Prevention - SPCC Plan

The US EPA's SPCC rule regulates non-transportation-related onshore and offshore facilities that could reasonably be expected to discharge oil into navigable waters of the United States or adjoining shorelines. It is the responsibility of the facility owner/operator to make the determination whether the facility is subject to the requirements of the SPCC rule. This determination is subject to review by the EPA's Regional Administrator. All requests for information regarding SPCC should be directed to the US EPA.

Compliance with the US EPA's SPCC rule is required. Documentation used to demonstrate compliance with the US EPA's SPCC rule may be used to demonstrate compliance with this section.

ARTICLE 4 RELEASE IDENTIFICATION AND REPORTING

Section 4-1 Suspected Releases

The following conditions require reporting of a suspected release from a regulated UST or AST system to the Director within 24 hours by telephone (303-318-8547) or facsimile (303-318-8546). If outside normal working hours or on a weekend and emergency assistance is needed, call the emergency response number (877-518-5608) at the Colorado Department of Public Health and Environment:

- (a) A failed line or tank tightness test.
- (b) Unusual operating conditions such as the erratic behavior of product dispensing equipment.
- (c) The presence of water in the tank if investigation results indicate the UST system is not liquid tight.
- (d) Inventory loss as indicated by the release detection method (unless the release detection equipment is found to be defective, is immediately repaired, and the correctly operating release detection equipment does not identify a loss of fuel).
- (e) Inconclusive or failed SIR results that are not overturned by the third-party SIR vendor within 24 hours of the receipt of the report from the vendor.
- (f) Identification of a regulated substance in secondary containment:
 - (1) Under dispenser container (UDC), sump containments, tank or line interstitial space, when that regulated substance is in contact with a penetration point or damage (crack) to containment equipment.
 - (2) Spill prevention devices (spill bucket), when that regulated substance is in contact with a damaged portion of the device, or when damage to the bottom of the device is identified and the device is free of liquid.
- (g) The discovery of released regulated substances at the site or in the surrounding area, such as the presence of contamination, free phase hydrocarbons, or vapors in soils, basements or utility lines, or the presence of contamination in surface, ground, well or drinking water when the source of the contamination is not known.

Section 4-2 Response to Suspected Releases

In response to a suspected release, the owner/operator shall:

- (a) Perform a system test that determines whether a leak exists in that portion of the tank system that routinely contains product (i.e. tanks and attached delivery piping) or secondary containment devices (e.g. under dispenser containment) that is suspected of releasing regulated substance. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release. All system test results shall be submitted to the Director within 10 calendar days of the suspected release. If the system test has a failed result, a site check must be performed according to (b) of this section.
- (b) Perform a site check, if stained soils, soils with petroleum odors, or field screening readings is the basis for suspecting a release (4-1(g)). Owner/operators must collect soil and groundwater samples for laboratory analysis as described in 5-2(a). These samples must be collected from appropriate locations and depths in the vicinity of the suspected source(s) (i.e. tanks, lines, dispensers) to determine if a release to the environment has occurred. All site check results shall be submitted to the Director within 30 calendar days of the suspected release.

Section 4-3 Confirmed Releases

The following conditions require reporting of a confirmed release to the Director within 24 hours by telephone (303-318-8547) or facsimile (303-318-8546). If outside normal working hours or on a weekend and emergency assistance is needed, call the emergency response number (877-518-5608) at the Colorado Department of Public Health and Environment.

- (a) The site check or other sample analyses indicate a release (any detection of any chemical(s) of concern),
- (b) A released regulated substances at the site or in the surrounding area is observed, such as the presence of fuel outside of the storage tank system, identification of contamination during routine inspections, system repairs, installation, replacement or other sub-pavement work, the presence of contamination, free phase hydrocarbons or vapors in soils, basements or utility lines, or the presence of contamination in surface, ground, well or drinking water when the source of the contamination is known to be the owner/operator's UST or AST system, or
- (c) If a fuel spill or overfill of regulated substance of any volume is not cleaned up within 24 hours or if a fuel spill or overfill of regulated substance that exceeds 25 gallons is observed.

[Note: Pursuant to 40 CFR § 302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.]

ARTICLE 5 RELEASE RESPONSE

Section 5-1 Response to Confirmed Releases

The owner/operator of a regulated substance system shall, in response to a confirmed release, comply with the requirements of these regulations, which incorporate a risk-based corrective action (RBCA) approach. Any work performed or required under these regulations does not automatically qualify the owner/operator for reimbursement from the Petroleum Storage Tank Fund (PSTF). The obligation of the owner/operator responsible for the release remains with that owner/operator in the event that the tank system and/or property changes ownership.

5-1-1 Acute human health hazards

Upon discovery of a regulated substance on ground surface or surface water, or if a regulated substance has the potential to create a fire, explosion or acute health hazard, emergency response action shall be initiated immediately.

The owner/operator responsible for the release shall:

- (a) Identify and mitigate fire, explosion, vapor and acute health hazards by contacting the local fire department or other first-responder and conducting other mitigation activities as capability allows;
- (b) Identify and mitigate impacts to water supply wells, supply lines or surface intake;
- (c) Initiate containment and removal of any free-phase hydrocarbons observed on the ground surface or surface water body; and
- (d) Report identification of either (a), (b) or (c) of this subsection to OPS within 24 hours of discovery.

5-1-2 Chronic and secondary human health hazards and other environmental impacts

After abatement of any acute human health hazards, the owner/operator responsible for the release shall:

- (a) Take action to prevent any further release into the environment;
- (b) Identify the source of the release and repair, replace or upgrade the portion of the petroleum storage tank system that failed;
- (c) Monitor and mitigate any health hazards posed by vapors or free-phase hydrocarbons that have entered into subsurface structures (such as sewers or basements); and
- (d) Remedy hazards posed by contaminated media that are excavated or exposed as a result of abatement activities. The owner/operator must comply with applicable state and local requirements if these remedies include treatment or disposal of contaminated media.

Section 5-2 Site Characterization

The purpose of site characterization is to define the extent of source area(s) of the release, determine the distribution of contamination in the subsurface, determine if POEs are impacted or potentially impacted, evaluate all exposure pathways and determine whether active remediation is necessary. Site characterization results must be submitted to OPS within 180 days of the release discovery in the report format provided on the OPS website.

Upon confirmation of a release and completion of emergency response, the owner/operator shall complete the following tasks.

- (a) Define the extent of the source area(s) and determine the distribution and extent of sorbed, dissolved, vapor and free-phase contamination. Access must be obtained to off-site properties, including rights-of-way, if the extent of contamination extends beyond the release property boundary.
- (1) Collect environmental samples to define the extent of contamination in the subsurface. Groundwater must be assessed unless there is reason to believe that it is not impacted and with the concurrence of the Director.
- (2) Laboratory analysis of samples shall be as follows.
 - (i) Soil samples:
 - (A) Benzene, toluene, ethyl benzene, xylenes (BTEX);
 - (B) The appropriate range(s) of total petroleum hydrocarbons (TPH);
 - (C) Priority poly-nuclear aromatic hydrocarbons (PAHs) must be analyzed for from the sample with the highest TPH concentration if TPH exceeds the Tier I screening level of 500 mg/kg; and
 - (D) Other petroleum fuel additives or petroleum compounds that are suspected to have been released.
 - (ii) Groundwater samples:
 - (A) BTEX, methyl tertiary-butyl ether (MTBE);
 - (B) The appropriate range(s) of TPH; and
 - (C) Other petroleum fuel additives or regulated compounds that are suspected to have been released.
 - (iii) Soil vapor samples:
 - (A) Benzene.
- (3) Identify all concentrations relative to the Tier I risk-based screening levels (RBSLs) listed in Table 5-1.

Table 5-1. Tier I RBSLs.

Media	Complete Exposure Pathway	Benzene	Toluene	Ethyl-benzene	Xylenes	MTBE
Surficial Soil [mg/kg]	Ingestion/ Dermal/ Inhalation	2.8	4,000	2,100	10,000	N/A
Subsurface Soil [mg/kg]	Leachate to Groundwater Ingestion	0.26	140	190	>Sat* or 260**	N/A
Soil Vapor [µg/m³]	Indoor Air Inhalation	2,900	>VP	>VP	>VP	N/A

Groundwater [mg/l]	Indoor Air Inhalation	0.016	10	26	2.9	N/A
	Groundwater Ingestion	0.005	1.0	0.7	10* or 1.4**	0.020

> VP Denotes that even at a concentration equal to the vapor pressure of the chemical, a hazard quotient of 1 is not exceeded.

> Sat Denotes that even at a concentration equal to the saturation of the chemical, a hazard quotient of 1 is not exceeded.

N/A Not applicable. No established RBSL.

* This RBSL will be in effect for releases that occurred prior to September 14, 2004.

** This RBSL will be in effect for releases that occurred on or after September 14, 2004

(b) Collect site-specific geologic and hydro-geologic data.

- (1) Determine the predominant lithology in the unsaturated and saturated zones;
- (2) Determine the depth to water, hydraulic gradient and groundwater flow direction;.
- (3) Determine the site-specific hydraulic conductivity; and
- (4) Evaluate other geologic conditions that influence groundwater flow.

(c) Evaluate all exposure pathways and identify impacted or potentially impacted POEs.

(d) Calculate Tier II site-specific target levels (SSTLs) for on-site contamination.

(e) Develop a Conceptual Site Model (CSM).

~~(f) Obtain concurrence of the Director that active remediation is warranted and conduct appropriate pilot testing. Evaluate the need for active remediation.~~

Section 5-3 Corrective Action

The owner/operator shall develop and implement a Corrective Action Plan (CAP) based on the need for remediation identified during Site Characterization. The purpose of the CAP is to develop an approach to reach cleanup goals of less than Tier I RBSLs at the impacted POEs and to Tier II SSTLs on-site and calculate the time frame to achieve the cleanup goals. A completed CAP report must be submitted to OPS within 60 days of the request one year of the release discovery date in the report format provided on the OPS website. Proposed scope of work costs must be presented if the release event is eligible for reimbursement from the PSTF.

(a) If active remedial action is not warranted, the owner/operator shall:

- (1) Calculate the time frame to achieve the remediation goals utilizing site-specific natural attenuation rates;
- (2) Present milestones to evaluate the natural attenuation progress; and
- (3) Present a monitoring and reporting schedule.

(b) If active remedial action is warranted, the owner/operator shall:

- (1) Define remedial objectives, identify targeted treatment areas, perform a remedial technology evaluation, and select a technically and economically feasible remedial approach.
 - (2) Identify and collect critical data needs (e.g., pilot testing) for the selected remedy(s).
 - (3) Prepare a full-scale remediation design;
 - (4) Calculate the time frame to achieve the remediation objectives;
 - (5) Present an implementation schedule;
 - (6) Present milestones to evaluate remediation progress; and
 - (7) Present a monitoring and reporting schedule.
- (c) The owner/operator must implement the CAP immediately in accordance with the implementation schedule of the approved CAP, or as directed by the Director. The owner/operator must report the results of CAP implementation in accordance with a schedule and in a format approved by the Director. Any deviation from the approved CAP, including schedule revisions, must be approved by the Director.

Section 5-4 No Further Action Request

The owner/operator may request No Further Action (NFA) for a release when the owner/operator can demonstrate that contamination is at concentrations that are protective of human health and the environment at all POE(s) and that data collected confirms no future risk according to the RBCA process. NFA can be requested under Tier I and Tier II closure criteria at any time when the conditions are met. Tier III and Tier IV closure criteria will only be considered after corrective action measures have been implemented, contamination has been removed to the maximum extent practicable and all other closure conditions are met.

An NFA determination will be based on the empirical data provided, fate and transport modeling, current property use and exposure to known contamination. The release event may be re-opened if subsequent information indicates a change in exposure scenarios. OPS cannot release the owner or operator from any liability that may be associated with any contamination at or from this site.

In order to reduce the potential for risk of exposure to contamination, the owner/operator must contact OPS immediately if the function of the property is modified for a different use and the new use does not include dispensing of petroleum products.

ARTICLE 6 ENFORCEMENT

Section 6-1 Enforcement Program

The Director provides these regulations to assist owners/operators with safe and proper operation of regulated storage tank systems. When a facility is found to be out of compliance with these regulations (7 C.C.R. § 1101-14) and/or statutes (C.R.S. § 8-20 and 8-20.5), the Director will pursue enforcement actions against the owner/operator. The enforcement process will include requiring the owner/operator to make repairs and/or upgrades, perform system tests, keep records, and other actions to bring the facility back into compliance. During and following the enforcement process, the Director will continue to assist the owner/operator to remain in compliance. The enforcement process may include monetary penalties up to five thousand dollars (\$5,000) per tank per day according to statute (C.R.S. § 8-20.5-107) if the enforcement obligations are not implemented according to the required schedule. Additionally, reductions to reimbursement amounts may be applied in accordance with Article 8.

6-1-1 Notice of Violation

- (a) The Director may issue a Notice of Violation (NOV) when an owner/operator does not fully respond to actions as required by the Director:
 - (1) Request for records.
 - (2) Requested actions as indicated by Director's inspector.
 - (3) Request for reports or information regarding release identification or response.
- (b) The Director may issue a NOV upon the discovery of a significant violation that poses an imminent threat to human health or safety or to the environment.
- (c) Within ten (10) working days after a NOV has been issued, the owner/operator may file a written request with the Division Director for an informal conference regarding the NOV. If the owner/operator does not request an informal conference within this time frame, all provisions of the NOV shall become final and not subject to further discussion. If the NOV is not resolved within the time frame prescribed in the NOV, the Division Director may seek judicial enforcement of the NOV, or an Enforcement Order may be issued.

6-1-2 Enforcement Order

- (a) An Enforcement Order may be issued when the violations included within a NOV or Settlement Agreement are not resolved within the prescribed time frame. The Enforcement Order may include increased fines up to five thousand dollars (\$5,000) per tank for each day of violation. In addition, the Enforcement Order may include Delivery Prohibition (Section 6-2).
- (b) Within ten (10) working days after an Enforcement Order has been issued, the owner/operator may file a written request with the Executive Director (or designee) for an informal conference regarding the Enforcement Order. If the owner/operator does not request an informal conference within this time-frame, all provisions of the Enforcement Order shall become final and not subject to further discussion. If the Enforcement Order is not resolved within the prescribed time frame, the Director may then seek judicial enforcement of the Enforcement Order.

6-1-3 Informal Conference

- (a) Upon receipt of the request, the Director shall provide the owner/operator with notice of the date, time and place of the informal conference. The Director shall preside at the informal conference, during which the owner/operator and OPS personnel may present information and arguments regarding the allegations and requirements of the NOV or the Enforcement Order.
- (b) Within twenty working days after the informal conference, the Director shall issue a Settlement Agreement in which the issues from the NOV and/or Enforcement Order will be upheld, modified or stricken. The Settlement Agreement will include a schedule of required activity for resolution of the violations. If the terms and/or schedule in the Settlement Agreement are not satisfied, either an Enforcement Order will be issued, re-issued, or the Director may seek judicial enforcement.
- (c) The Settlement Agreement issued by the Director may be appealed within twenty working days to the Executive Director of the department. The Executive Director may either conduct the hearing personally or appoint an administrative law judge from the office of administrative courts in the department of personnel to conduct the hearing.

Section 6-2 Underground Storage Tank Delivery Prohibition

Delivery prohibition is an enforcement action prohibiting the delivery, deposit, or acceptance of product to an UST that has been determined by OPS to be ineligible for such delivery, deposit, or acceptance. For purposes of this section, the term "UST" means those tanks that satisfy the definition of UST in C.R.S. §8-20.5-101, except for those tanks identified in §8-20.5-101 17(b) and as defined in 2-1-1(b) as excluded or deferred storage tanks. These requirements apply to regulated substance USTs. OPS will prohibit delivery, deposit, or acceptance of product on an individual UST basis, instead of to every UST at a facility, except if warranted.

UST owners/operators and product deliverers are responsible for not delivering, depositing, or accepting product to a UST identified by OPS as ineligible to receive product.

6-2-1 Criteria for Delivery Prohibition

- (a) Field Inspection: OPS shall prohibit delivery, deposit, or acceptance of product during an inspection if any of the following conditions exist.
 - (1) Required spill prevention equipment is not installed or functional.
 - (2) Required overfill protection equipment is not installed, or functional.
 - (3) Required leak detection equipment is not installed, or functional.
 - (4) Required corrosion protection equipment is not installed or functional.
 - (5) Failure to register or maintain current registration on an UST.
 - (6) Upon the discovery of a significant violation that poses an imminent threat to human health or safety or the environment. In addition to delivery prohibition, OPS may also require the removal of product from the tank:
- (b) Enforcement Notice: OPS shall prohibit delivery, deposit, or acceptance of product if the owner/operator of that tank has been issued a written warning or citation (Settlement Agreement or Notice of Violation per C.R.S. § 8-20.5-107) under any of the following circumstances and the owner/operator has failed to take corrective action within the requested time frame.
 - (1) Inability to demonstrate proper operation and/or maintenance of leak detection equipment.
 - (2) Inability to demonstrate proper operation and/or maintenance of spill, overfill, or corrosion protection equipment.
 - (3) Discovery of a significant violation that poses an imminent threat to human health or safety, or to the environment. In addition to delivery prohibition, OPS may also require the removal of product from the tank.

6-2-2 Red Tag Mechanisms Used to Identify Ineligible USTs

Upon determination that any of the criteria for delivery prohibition have been met, including the discovery of a significant violation that poses an imminent threat to human health or safety or the environment, OPS will attach a red tag to each fill pipe of the ineligible UST clearly identifying the tank as ineligible for delivery, deposit, or acceptance of product. Before affixing a red tag to the fill pipe of an UST system, OPS shall document the level of stored product in the tank.

- (a) The red tag will be attached to the fill pipe using a tamper-resistant wire seal so that the tag is visible to any person attempting to deliver a regulated substance to the UST.

- (b) The tag shall be red in color and made of plastic or other durable and damage resistant material and shall bear the following information:
- (1) The following wording, printed in white at the top of the tag in all capital letters in at least 36 point bold-faced type: "DELIVERY PROHIBITED!"
 - (2) The following wording, printed in white below the wording described in subsection (b)(1) in at least 16 point type: "Delivering a regulated substance, or removing, defacing, altering, or otherwise tampering with this tag may result in civil penalties of up to \$5000 per day."
 - (3) Printed below the wording described in subsection (b)(2), the following wording in at least 16 point type: "If you have questions call OPS (303) 318-8547"
 - (4) Following the wording described above, there shall be a blank area at least 1/2 inch wide by four inches long in which the OPS inspector shall, at the time of placement, write legibly in permanent ink the date, facility identification number, product type, and the inspector's initials.

No owner or operator of a facility or delivery person may deposit or allow the deposit of a regulated substance into an UST system that has a red tag affixed to the system's fill pipe. Unless authorized by OPS, no person shall remove, deface, alter, or otherwise tamper with a red tag such that the information contained on the tag is not legible.

6-2-3 Notification Processes For UST Owners/Operators and Product Deliverers

- (a) Immediately after affixing a red tag, OPS shall notify the operator, if present on site, of the significant violation(s) for which the red tag was issued, along with a written report noting the violations. OPS shall also request current owner/operator contact information for future notifications.
- (b) Within 24 hours of affixing a red tag, OPS shall notify the owner in writing of the significant violation(s) for which the red tag was issued.
- (c) Within 24 hours of affixing a red tag, OPS shall add the red tagged tank(s) to the OPS website list of facilities that have delivery prohibitions.
- (d) If a permit is required by OPS in order to correct one or more significant violations identified, OPS shall, to the extent feasible, expedite its review and issuance of such permit(s).

6-2-4 Reclassifying Ineligible USTs as Eligible to Receive Product

- (a) Upon notification by the owner or operator documenting to the satisfaction of OPS that there was not a significant violation or the significant violation has been corrected, or an emergency condition as described in 6-2-6 exists, OPS shall provide verbal and written authorization to the owner or operator to remove the red tag. If OPS disputes the notification provided by the owner or operator, then the procedural provisions of C.R.S. § 8-20.5-107 shall apply, except that the owner/operator may request and be entitled to an informal conference with the Director within three working days. A delivery prohibition required by a red tag shall remain in effect during the time that the procedural provisions of C.R.S. § 8-20.5-107 are invoked, unless the owner or operator requests and the Director grants a stay of the effect of the red tag.
- (b) By close of business (5pm) on that same day, OPS will also remove that tank from the OPS website list of facilities that have delivery prohibitions.
- (c) OPS may inspect the UST system within five working days of notification to determine whether the system continues to be in significant violation, regardless of whether it has authorized removal of the red tag by the owner or operator. If, upon inspection, OPS determines that the system is no

longer in significant violation and it has not already authorized removal of the red tag, OPS shall immediately remove the red tag.

- (d) Upon removing a red tag from an UST system, OPS shall document the level of stored product in the tank. If the owner or operator removes a red tag pursuant to written authorization by the field inspector, the owner or operator shall document the level of stored product in the tank immediately after removing the red tag.
- (e) A red tag that has been removed by the owner or operator shall be returned to the OPS within five working days, or sooner if requested by the field inspector.

6-2-5 Delivery Prohibition Deferral in Rural and Remote Areas

OPS may decide not to identify an UST as ineligible for delivery, deposit, or acceptance of product if such a prohibition would jeopardize the availability of, or access to, motor fuel in any rural and remote areas. However, OPS shall only defer application of delivery prohibition for 30 calendar days after determining that an UST is ineligible for delivery, deposit, or acceptance of product.

6-2-6 Delivery Prohibition Deferral in Emergency Situations

In emergency situations, the Director may decide not to identify an UST as ineligible for delivery, deposit, or acceptance of product if such a prohibition is not in the best interest of the public, even in the cases of significant and/or sustained noncompliance. In such emergency situations, OPS shall only defer application of delivery prohibition for up to 180 calendar days after determining an UST is ineligible for delivery, deposit, or acceptance of product.

6-2-7 Removal of Red Tag from Emergency Generator Tank Systems

OPS may remove or authorize the removal of a red tag from an emergency generator tank system before a significant violation has been corrected if OPS determines that an emergency situation exists requiring operation of the system and the delivery of petroleum is necessary for the continued operation of the system during the emergency.

ARTICLE 7 FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS/OPERATORS OF PETROLEUM UNDERGROUND STORAGE TANKS

Section 7-1 Applicability

- (a) Owners and operators of petroleum underground storage tanks are required to demonstrate compliance with the financial responsibility (FR) requirements in federal regulations by any of the mechanisms described in 40 CFR 280.94 through 280.103. Per C.R.S. § 8-20.5-206, FR is required for underground storage tanks. Per the June 2015 revision of EPA regulations, airport hydrant fuel distribution systems, UST systems with field constructed tanks, and UST systems that store fuel solely for use by emergency power generators must also demonstrate FR. Approved mechanisms per these Colorado regulations are described later in this article. FR is intended to ensure that adequate monies are available in the event of an accidental release from a petroleum storage tank system to provide for cleanup of the release (corrective action) and to potentially compensate impacted third parties for bodily injury and property damage resulting from the release. According to 40 CFR 280.93, the amount of FR required ranges from \$500,000 up to \$2 million depending on the type of facility, monthly throughput of petroleum product and number of tanks. If an owner or operator cannot meet the required deductible amounts listed in Article 8, another FR mechanism must be identified and obtained in order for the owner or operator to remain in compliance and continue operation of the storage tank system.
- (b) This FR requirement applies to the following:
 - (1) Owners/operators of all petroleum UST systems except as otherwise provided in this section.
 - (2) If the owner and operator of a petroleum UST are separate persons, only one person is required to demonstrate FR; however, both persons are jointly liable for release cleanup and third-party damages, if neither person complies with Article 7.
- (c) This FR requirement does not apply to the following:
 - (1) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.
 - (2) Owners/operators of any UST system described in 2-1.

Section 7-2 Financial Responsibility Mechanisms

Mechanisms to satisfy FR as described in 7-1 are listed below:

- (a) 40 CFR Part 280.101 designates state funds as an approved mechanism. The Colorado Petroleum Storage Tank Fund, referred to in this section as the “Fund”, is an EPA approved Fund to provide FR to tank owners and operators in the State of Colorado. Moneys in the Fund, created pursuant to C.R.S. Section 8-20.5-103, may be used by certain owners and operators of petroleum storage tanks to demonstrate their compliance with the FR requirements in federal regulations.
- (b) Owners and operators not eligible for access to the Fund shall be solely responsible for securing independent financial assistance, but may use any federally approved financial assurance mechanism identified in 40 C.F.R. 280.94 through 280.103 to help fund the cost of complying with such requirements. These federally approved mechanisms are as follows.
 - (1) Financial Test of Self-Insurance.
 - (i) An owner/operator may satisfy the requirements of C.R.S. § 8-20.5-206 by passing a financial test as specified in this section. To pass the financial test of self-

insurance, the owner/operator's net worth must be based on year-end financial statements for the latest fiscal year.

- (ii) The fiscal year-end financial statements of the owner/operator must be examined by an independent certified public accountant and be submitted along with the accountant's report of the examination.
- (iii) The owner/operator's year-end financial statements must not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (iv) To demonstrate that it meets the financial test under this subsection the chief financial officer of the owner/operator must sign, within 120 calendar days of the close of each financial reporting year, a letter stating that the owner/operator has met the financial test for self-insurance covering USTs at the facilities listed. The letter must contain a list of the facilities covered, and the following information must be provided for each facility: the name and address of the facility, the number of tanks at the facility, the size of each tank and the regulated substance contained in each tank.
- (v) If an owner/operator using the test to provide FR finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner/operator must obtain alternate coverage as described in this article within 150 calendar days of the end of the year for which financial statements have been prepared or within 30 calendar days of the date of the financial statement, whichever is earlier.
- (vi) The Director may require reports of financial condition from the owner/operator at any time. If the Director finds, on the basis of such reports or other information, that the owner/operator no longer meets the financial test requirements of this subsection, the owner/operator must obtain alternate coverage within 30 calendar days after notification of such a finding.
- (vii) If the owner/operator fails to obtain alternate FR within 60 calendar days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 calendar days of notification by the Director that he or she no longer meets the requirements of the financial test, the owner/operator must notify the Director of such failure within 10 calendar days.

(2) Insurance Coverage.

- (i) An owner/operator may satisfy the requirements of C.R.S. § 8-20.5-206 by obtaining a liability insurance policy that conforms to the requirements of this section from a qualified insurer or risk retention group.
- (ii) If the policy contains any type of deductible, the policy must state that the insurer will be liable for such deductible amount in the event of a default by the owner/operator.
- (iii) Each insurance policy must be issued by an insurer that is authorized to transact the business of insurance or authorized to provide insurance as an excess or surplus lines insurer in Colorado. The insurer must be in compliance with all applicable regulations, policies and procedures of the Colorado Division of Insurance.
- (iv) Each owner/operator must obtain a certificate of insurance from the insurer showing the name and address of each covered location, the policy number, period of coverage, name and address of the insurer and the name and address of the

insured for each facility covered by insurance. In the policy, the insurer must certify the following with respect to the insurance described herein.

- (A) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this certificate applies.
- (B) When requested by the Director, the insurer agrees to furnish a signed duplicate original of the policy.
- (C) Notice of cancellation of the insurance by the insurer must be sent to the Director and to the insured at least 60 calendar days prior to the effective date of the cancellation of the insurance. However, if the cancellation is based on one or more of the following reasons, then such notice may be sent less than 60 calendar days prior to the effective date of the cancellation of the insurance: fraud; material misrepresentation; nonpayment of premium; or any other reason approved by the Commissioner of Insurance.
- (D) The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the insurer within six months of the effective date of the cancellation or other termination of the policy.

(3) Letter of Credit.

- (i) An owner/operator may satisfy the requirements of C.R.S. § 8-20.5-206 by obtaining an irrevocable letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in Colorado and whose letter of credit operations are regulated and examined by the Colorado Department of Regulatory Agencies.
- (ii) The letter of credit must be irrevocable for a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 90 calendar days before the current expiration date, the issuing institution notifies the Director by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 90 calendar days will begin on the date when the Director receives the notice, as evidenced by the return receipt.
- (iii) The letter of credit must be payable to the Director and may be drawn on to cover corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the UST(s) identified in the letter of credit.
- (iv) The letter of credit must list the name(s) and address(es) of the covered facility(ies) where the tanks are located, the number of tanks at each facility and the regulated substances contained by the tanks at each facility.

(4) Trust Fund.

- (i) An owner/operator may satisfy the requirements of C.R.S. § 8-20.5-206 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Colorado Department of Regulatory Agencies.
- (ii) The trust fund, when established, must be funded for the full required amount of coverage.

- (iii) The trustee must be instructed to disburse funds from the trust fund to pay the costs of corrective action and/or third-party bodily injury and property damage only as directed or approved by the Director.

(5) Certificate of Deposit or Other Secured Financial Instrument.

A certificate of deposit or another financial instrument secured by an agency of Colorado or the US Government may be used to satisfy the requirements of C.R.S. § 8-20.5-206 provided that such financial instrument is made payable to the Director. Any interest or dividends payable by such instrument may be made payable to the owner/operator using this method of assuring FR. This financial instrument will be returned to the owner/operator by the Director only after the instrument has been replaced by an alternate FR mechanism or the owner/operator is released from the FR requirement under 7-3(f) below.

Section 7-3 Maintenance of Financial Responsibility

(a) Substitution of FR Mechanisms.

- (1) An owner/operator may use any alternate FR mechanism specified above provided that at all times the owner/operator maintains an effective FR mechanism that satisfies the requirements of C.R.S. § 8-20.5-206.
- (2) After obtaining alternate FR as specified in this Article 7, an owner/operator may cancel a prior FR mechanism by providing notice to the provider of FR.

(b) Cancellation by a Provider of FR.

If a provider of FR cancels or fails to renew for reasons other than incapacity of the provider as specified in subsection (c) below, the owner/operator must obtain alternate coverage within 60 calendar days after receipt of the notice of termination. If the owner/operator fails to obtain alternate coverage within 60 calendar days after receipt of the notice of termination, the owner/operator must notify the Director of such failure and submit:

- (1) The name and address of the provider of FR;
- (2) The effective date of termination; and
- (3) The evidence of the FR mechanism subject to termination, maintained in accordance with subsection (d).

(c) Reporting by Owner/Operator.

- (1) An owner/operator must submit current evidence of FR to the Director:
 - (i) Within 30 calendar days after the owner/operator identifies a release from an UST, which is required to be reported under Article 4.
 - (ii) Within 30 calendar days after the owner/operator receives notice of any of the following and fails to obtain alternate coverage as required by Article 7.
 - (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code, naming a provider of FR as a debtor;
 - (B) Suspension or revocation of the authority of a provider of financial responsibility to issue a FR mechanism; or
 - (C) Any other incapacity of a provider of FR. or

- (iii) As required by 7-2(b)(1) (vii) and 7-3 (b).
 - (2) An owner/operator must certify compliance with the FR requirements of Article 7 as specified in the new tank registration form when notifying the Director of the installation of a new UST under 2-2-3(f)(3).
 - (3) The Director may require an owner/operator to submit evidence of FR as described in subsection (d)(2) or other information relevant to compliance with Article 7 at any time.
- (d) Record keeping.
- (1) Owners/operators must maintain evidence of all FR mechanisms used to demonstrate financial responsibility for an UST until released under subsection (f). An owner/operator must maintain such evidence at the site or at the owner's or operator's place of business. Records maintained off-site must be made available upon request by the Director.
 - (2) An owner/operator must maintain the following types of evidence of FR:
 - (i) An owner/operator using a financial test of self-insurance must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent financial reporting year. Such evidence must be on file no later than 120 calendar days after the close of the financial reporting year or 30 calendar days from the date of the financial statement, whichever is earlier.
 - (ii) An owner/operator using a letter of credit must maintain a copy of the signed agreement and copies of any amendments to the agreement.
 - (iii) An owner/operator using an insurance policy must maintain a copy of the signed insurance policy, the certificate of insurance specified in subsection 7-2(b)(2)(iv) and any amendments to the policy.
- (e) Drawing on FR Mechanisms.
- (1) The Director shall require the insurer, trustee, or institution issuing a letter of credit or certificate of deposit to make available the amount of funds stipulated by the Director, up to the limit of funds provided by the financial responsibility mechanism if:
 - (i) The owner/operator fails to establish alternate FR within 60 calendar days after receiving notice of cancellation of insurance, letter of credit, or other FR mechanism; and
 - (ii) The Director determines or suspects that a release from an UST covered by the mechanism has occurred and so notifies the owner/operator or the owner/operator has notified the Director of a release from an UST covered by the mechanism.
 - (2) The Director may draw on these available funds when:
 - (i) The Director makes a final determination that a release has occurred and immediate or long term corrective action for the release is needed, and the owner/operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required; or
 - (ii) The Director has received either:
 - (A) Certification from the owner/operator, and the third-party liability claimant(s) and from the attorneys representing the owner/operator and the third-party liability claimant(s) that a third-party liability claim should be paid; or

- (B) A valid final court order establishing a judgment against the owner/operator for bodily injury or property damage caused by an accidental release from an UST covered by FR under Article 7; and the Director determines that the owner/operator has not satisfied the judgment.
- (f) Release from the Requirements. An owner/operator is no longer required to maintain FR under Article 7 for an UST after any necessary corrective action has been completed and the tank has been permanently closed or undergoes a change-in-service as required by these regulations.
- (g) Bankruptcy or Other Incapacity of Owner/Operator or Provider of FR.
 - (1) Within 10 calendar days after the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code, naming an owner/operator as debtor, the owner/operator must notify the Director by certified mail of such commencement and submit a list of all affected UST facilities.
 - (2) An owner/operator will be deemed to be without the required FR in the event of a bankruptcy or incapacity of its provider of FR, or a suspension or revocation of the authority of the provider of FR to issue an insurance policy, letter of credit, or other FR mechanism. The owner/operator must obtain alternate FR as specified in Article 7 within 30 calendar days after receiving notice of such an event. If the owner/operator does not obtain alternate coverage within 30 calendar days after such notification, the owner/operator must notify the Director immediately.
- (h) Reestablishment of FR.
 - (1) Whenever the required amount of FR has been reduced by payment of claims due to a release at any facility, and the owner/operator is responsible for another facility or other facilities then the owner/operator must immediately reestablish the ability to pay the required amounts for any release at the other facility(ies).
 - (2) Whenever the required amount of FR for the owner/operator of a single facility has been reduced by payment of claims due to a release at a facility and the period of corrective action for that release has been completed, the owner/operator must then immediately reestablish the required amount of FR.

ARTICLE 8 PETROLEUM STORAGE TANK FUND

Section 8-1 Eligibility

- (a) Only the following persons are potentially eligible for reimbursement from the Fund, provided they meet the other criteria:
 - (1) The current owner/operator of a regulated UST or AST system;
 - (2) Any past owner/operator of a regulated UST or AST system; or
 - (3) Other persons considered not responsible for the release as set forth in C.R.S. § 8-20.5-206 (3)(a) through (e) and CRS 8-20.5-303 (3)(a) through (e).
- (b) Insurance companies or their agents are not eligible to make claims against the fund.
- (c) An applicant making any claim against the Fund shall be held accountable for compliance with the following requirements.
 - (1) Each applicant must meet the owner/operator criteria for corrective action as established by the Director.
 - (2) When required by the Director, an owner/operator must demonstrate that accurate and complete records are maintained that confirm a release detected on or after July 1, 1989, except for those releases discussed in 8-1(g).
 - (3) Each owner/operator must have registered the tank(s) and paid the current and past annual tank registration fees. Payment penalties and percent reductions may be imposed by the Committee for non-payment or late payment of registration fees for each petroleum storage tank owned.
 - (4) Each owner/operator must have paid the environmental response surcharge applied to petroleum products in Colorado and must not be in default on any obligation caused by the environmental response surcharge.
 - (5) Each owner/operator must be in substantial compliance (as determined by the Committee) with all Colorado laws and regulations that address the handling, storage, record keeping, and dispensing of regulated substances, including but not limited to C.R.S. § 8-20-230, 8-20-231, all of 8-20.5, and Code 30 and Code 30A of the NFPA, to be eligible for participation in the Fund.
 - (6) Each owner/operator must demonstrate evidence of FR of \$10,000 for corrective action and \$25,000 for compensation of third-party personal injury or property damage through the mechanisms or combination of the mechanisms contained in the financial responsibility established by the Director and in C.R.S. Sections 8-20.5-206 and 303.
 - (7) Each owner/operator must demonstrate that allowable costs have exceeded the deductible (as described in subsection (6)) for assessment and corrective action per C.R.S. § 8-20.5-208, 209, and 304.
 - (8) Each owner/operator must comply with the criteria for reporting of a release to the Director, including but not limited to C.R.S. § 8-20.5-208.

(d) A mortgagee making any claim against the Fund shall comply with the following requirements:

- (1) A mortgagee whose mortgage or deed of trust is dated before September 30, 1995 is eligible to participate in the Fund if the mortgagee has acquired, by foreclosure or receipt of a deed in lieu of foreclosure, the property on which the petroleum tank system is located and each of the following conditions has been met:
 - (i) The mortgagee has not actively managed the property during the period that it held a security interest;
 - (ii) The mortgagee has notified the Director of his/her acquisition of the property by certified mail (return receipt requested) or other documented delivery within 30 working days of the acquisition, if acquired after September 30, 1995;
 - (iii) The mortgagee has complied with all applicable corrective action requirements; and
 - (iv) The mortgagee is not affiliated with or related to the mortgagor.
- (2) A mortgagee whose mortgage or deed of trust is dated on or after September 30, 1995, is eligible to participate in the Fund if the mortgagee meets all provisions of subsection (1) above and has a Certificate of Eligibility issued pursuant to subsection (3) below. There must be an operating petroleum storage tank system, which is not orphaned or abandoned, on the property at the time a Certificate of Eligibility is issued. A Certificate of Eligibility may be issued at any time before foreclosure or receipt of a deed in lieu of foreclosure; however, if the certificate is issued prior to the loan closing, the certificate will only be effective upon closing. A Certificate of Eligibility will not cover contamination detected on a property before the Certificate of Eligibility is issued.
- (3) A Certificate of Eligibility may be issued to a mortgagee if the site is in compliance with all applicable laws, a Petroleum Storage Tank Status Sheet has been properly completed, and one of the following conditions has been satisfied:
 - (i) For a petroleum UST system:
 - (A) Documentation has been provided to the Director showing that all petroleum storage tanks and tank lines at the site passed a tightness test no more than 60 calendar days prior to the completion of the Petroleum Storage Tank Status Sheet; or
 - (B) Documentation has been provided to the Director showing tanks and lines at the site are monitored by a properly installed and operating third-party certified monthly monitoring device; or
 - (C) Documentation has been provided to the Director showing that an environmental site assessment performed no more than 60 calendar days prior to completion of the Petroleum Storage Tank Status Sheet indicates the site does not require site characterization or corrective action.
 - (ii) For an AST system, documentation has been provided to the Director showing that all underground lines at the site passed a tightness test no more than 60 calendar days prior to completion of the Petroleum Storage Tank Status Sheet and:
 - (A) The AST system meets the standards in 3-2-3(e) if installed before October 1, 1994;
 - (B) The AST system meets the standards for ASTs installed after September 30, 1994; or

(C) Documentation has been provided to the Director showing that an environmental site assessment performed no more than 60 calendar days prior to completion of the Petroleum Storage Tank Status Sheet indicates the site does not require initial site characterization or corrective action.

(4) A mortgagee who is eligible to participate in the Fund pursuant to these regulations may sell the property and transfer the Certificate of Eligibility to the buyer. The buyer may participate in the Fund pursuant to C.R.S. § 8-20.5-206 (3) and 303 (3) C.R.S., provided that:

(i) The buyer is not a former tank owner/operator of the site or an affiliate or relation to such a former tank owner/operator;

(ii) The buyer, within three months of acquiring the property from the mortgagee, completes and submits to the Director sufficient documentation to show that the site is in compliance with applicable regulations; or, within three months of acquiring the property, the Director approves a plan, submitted by the buyer, showing how and when the site will be brought into compliance; and,

(iii) Within six months of acquiring the property, the buyer either provides documentation to the Director showing that an environmental site assessment indicates the site does not require initial site characterization or corrective action, in which case the transferred Certificate of Eligibility is no longer a valid document; or, provides to the Director documentation that petroleum contamination is present on the property, in which case the transferred Certificate of Eligibility remains valid for the balance of the remediation, provided such remediation is conducted pursuant to Colorado statutes and regulations.

(e) Eligible Releases

Only releases satisfying all of the following criteria shall be considered eligible:

- (1) The release must be accidental in nature;
- (2) The storage tanks and related piping are regulated under these regulations and contain petroleum product regulated by these regulations;
- (3) Subject to any Committee policies on reimbursement, the Director has approved the design for corrective action at the site; and
- (4) Subject to any Committee policies on reimbursement, the Director has determined that the corrective action has, or when completed will have, adequately addressed the release in terms of protecting public health, welfare and the environment.

(f) Releases Not Eligible

Releases with the following criteria shall be considered not eligible:

- (1) Releases from USTs and ASTs used to store petroleum products intended for aviation purposes.
- (2) Releases from USTs and ASTs used to store petroleum products intended for use by railroad equipment or locomotives.
- (3) Releases from USTs and ASTs that are exempt or deferred in 2-1-1(b) and (c) and 3-1(b).

- (4) Releases at sites on the National Priorities List (NPL) or sites being cleaned up by the State under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Owners and operators of tanks containing regulated substances other than petroleum are not eligible to the Fund but must demonstrate FR using some other approved FR mechanism.

(g) Eligibility of Expenses

- (1) Only expenses incurred on or after July 1, 1989 are potentially eligible for reimbursement. All expenses incurred before July 1, 1989 are not eligible for reimbursement.
- (2) For releases detected on or after December 22, 1988 but before July 1, 1989, expenses incurred on or after July 1, 1989, are potentially eligible for reimbursement only if the original application was submitted before January 1, 1992. This January 1, 1992 deadline does not apply to applicants determined to bear no responsibility for the release pursuant to statute.
- (3) Expenses related to releases detected before December 22, 1988 are not eligible for reimbursement.
- (4) Expenses related to tanks closed in place or removed before December 22, 1988 are not eligible for reimbursement. This December 22, 1988 deadline does not apply to applicants determined to bear no responsibility for the release pursuant to statute.

(h) In addition to the above, the following subsections apply to all ASTs,

- (1) The Director will make positive eligibility recommendations to the Committee for facilities that were in operation prior to October 1, 1994 provided that:
 - (i) Existing ASTs were installed and operated in substantial compliance with the applicable statutes and regulations that were in effect at the time the tank system was installed; and
 - (ii) Existing ASTs that were required to prepare and implement a "Spill Prevention, Control and Countermeasures" (SPCC) plan as specified in the 40 CFR Part 112 were in substantial compliance with that requirement.

[Note: Installation and operating rules can be found in NFPA Codes 30 and 30A that were in effect at the time of installation.]

- (2) The Director will also make positive eligibility recommendations to the Committee for facilities that were in operation prior to October 1, 1994, that are not able to demonstrate 100% compliance with the regulations in effect at the time the ASTs were installed, provided that:
 - (i) There are no serious safety violations, and the safety concerns listed here are satisfied.
 - (A) Adequate ventilation, either natural or forced must exist to guarantee that flammable liquid vapors cannot build up to 25% of the lower flammable limit anywhere because of the presence of the tank facility in question.
 - (B) Normal vent lines must be of sufficient capacity to ensure that no fuel drop will cause the pressure inside the tank to exceed the test pressure. A spark arrester cap is required at the end of the vent line and it must be located "in the clear" and at least 12 feet above ground level.

- (C) A label such as U.L. 142, UL ABOVEGROUND TANK, or equivalent must be attached to the tank to verify that it meets the emergency relief venting requirement of NFPA 30.
- (D) Adequate spill control, overflow prevention control, and secondary containment methods or devices must be provided and in regular use at the facility; and
- (ii) A SPCC plan, if required for the facility, has been developed, approved and followed.
- (3) The Director will consider closure of a facility and/or removal of non-compliant tanks to be a mitigating factor in making the recommendation to the Committee.
- (4) Nothing herein shall be construed to prevent the Committee from imposing percentage reductions upon applicants who are in substantial compliance with regulations but not in total compliance.

Section 8-2 Reimbursement

- (a) The owner/operator of the petroleum storage tanks from which a release has occurred, or another person eligible pursuant to statute, and for which corrective action has been performed, or his duly authorized agent; may file an application for reimbursement.
- (b) An application for reimbursement shall include a completed application form provided by the Director and shall contain the following:
 - (1) Legible copies of invoices according to the format required by the Director.
 - (2) The application shall provide proof of payment of invoices as follows:
 - (i) The amounts shown on the invoices for which reimbursement is requested have been paid in full by the applicant according to one of the following methods;
 - (A) Business receipts, indicating payments received;
 - (B) Fronts and backs of cancelled checks;
 - (C) The certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full;
 - (D) Provided the parties are unaffiliated and unrelated, a notarized affidavit signed by the person that performed the corrective action affirming that the amounts which the applicant represents as being paid were paid in full; or
 - (ii) Provided the parties are unaffiliated and unrelated, a notarized affidavit stating that the invoices relative to the referenced application for reimbursement from the Fund will be paid in full by the applicant upon receipt of the reimbursement in accordance with a promissory agreement.
 - (3) Any other information which the Committee may reasonably require.
- (c) Subject to Committee policies regarding reimbursement, all applicants must comply with all corrective action requirements and a corrective action plan (including a technical and economic feasibility summary) must be approved before costs, associated with the corrective action, are eligible. The applicant can be required to provide proof that all corrective action requirements have been met.

- (d) The applicant may file the application at any phase of the corrective action subject to any policies adopted by the Committee.
- (e) Incomplete submittals shall suspend processing of applications.
- (f) Technical information may be required by the Committee or the Director as part of any application for reimbursement:
 - (1) A detailed account of what corrective action has been taken, why specific actions were taken, when, by whom, and with what results.
 - (2) An estimate of other corrective action measures that may be required to remediate the facility and the estimated time required to complete such measures.
 - (3) Line and tank tightness tests, release detection and release prevention records. These records may include time periods ranging from six months to three years prior to a release or detection of contamination.
 - (4) Documentation that a release being cleaned up is not a new release requiring payment of a separate deductible, if the Director or the Committee has any information indicating a separate release may have occurred.
- (g) Applications for reimbursement shall be submitted according to the electronic format and location as required by the Director and by hard copy to:

Petroleum Storage Tank Committee
Department of Labor and Employment
Division of Oil and Public Safety
633 17th St, Ste 500
Denver, CO 80202-3610

- (h) The date of filing of any document shall be the receipt date stamped on the document.

Section 8-3 Allowable Costs

- (a) Allowable costs are those costs and expenses which arise directly from the performance of necessary corrective action in accordance with the requirements of the Director and are deemed reasonable by the Committee subject to the limitations prescribed by this section.
- (b) Allowable costs shall include but not be limited to the following:
 - (1) Abatement of impacts and immediate threats of impact to human health, safety, and the environment;
 - (2) Temporary provision of a water supply utilized specifically for domestic consumption;
 - (3) Collection and analysis of surface and subsurface soil and water, free phase hydrocarbons, and vapor samples;
 - (4) Emplacement of soil borings and/or monitor wells for remediation purposes;
 - (5) Removal, storage, treatment, recycling, transport, and disposal of free phase hydrocarbons, vapors, contaminated soils, contaminated water in accordance with applicable laws;
 - (6) Removal and disposal (including transport) of soils and pavement where removal is necessary to the performance of corrective action;

- (7) Identification and testing of affected or potentially affected drinking water sources;
- (8) Design of plans for site assessment and remediation;
- (9) Permitting, acquisition, installation, startup, operation and maintenance of site assessment and remediation systems, including monitoring;
- (10) Temporary relocation of utility structures when necessary to the performance of corrective action;
- (11) Preparation of technical reports required pursuant to the requirements of these regulations;
- (12) The fair market value of access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;
- (13) Performance of any corrective action measure, which is specifically required by a section of these regulations, or an order of the Director, or a written request or confirmation by the Committee;
- (14) Equipment costs which are related solely to remediation. If the costs of the equipment is reimbursed by the Fund, when the equipment is no longer needed any salvage value of the equipment shall be returned to the Fund.
- (15) Bodily injury or property damage suffered by third parties.
- (16) Any other costs determined by the Committee to be allowable in accordance with the provisions of these regulations.
- (17) Costs associated with preparing and filing an application for reimbursement not to exceed 1% of the net allowable reimbursement per application up to a maximum of \$2,000 per event.

Section 8-4 Unallowable Costs

- (a) Costs and expenses which are not applicable to the performance of necessary corrective action in accordance with the requirements of the Director or are deemed unreasonable by the Committee are unallowable for reimbursement.
- (b) The following types of costs are not allowable for reimbursement.
 - (1) The cost of replacement, repair, maintenance, testing and upgrading of affected tanks and associated piping.
 - (2) The loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under these regulations.
 - (3) Decreased property values.
 - (4) Bodily injury or property damage except for injuries or damages suffered by third parties.
 - (5) Fees for legal services.
 - (7) The costs of making improvements to the facility beyond those that are required for corrective action.

- (8) Costs, including those associated with contamination assessments performed, for any purpose other than investigating the extent and impacts of a release, where no corrective action is required by Colorado statutes and regulations.
 - (9) Costs of compiling and storing records.
 - (10) Any activities, including those required by these regulations, which are not conducted in compliance with applicable state and federal environmental laws, including laws relating to the transport and disposal of waste.
 - (11) Penalties or payment for damages assessed by the Committee, Director, the Department of Public Health and Environment, and/or the Federal government.
 - (12) At the Committee's sole discretion, claims for reimbursement relating to a tank owned or operated by a person who has been convicted of a violation of any law or rule that relates to the installation, operation, or management of petroleum storage tanks.
 - (13) Costs in excess of those considered reasonable by the Committee.
 - (14) At the Committee's sole discretion, cleanup costs resulting from negligence or misconduct on the part of the owner/operator or applicant.
 - (15) Subject to Committee policy, costs incurred during the closure of a tank
 - (16) Costs for the rental of equipment owned by the applicant if the equipment was previously reimbursed by the Fund.
 - (17) Interest paid on loans.
 - (18) Costs that are a part of normal business expenses (i.e. insurance charges).
- (c) Any attempt by an applicant to claim reimbursement under circumstances when the applicant knew or should have known (this includes knowledge held by the applicant's environmental consultant) that some or all costs would be unallowed authorizes the Committee to reduce otherwise allowable costs submitted by the applicant (whether on the same or a different application). Any reduction imposed under this section shall be equal to the amount of the unallowed costs. This subsection applies only to the unallowed costs in subsections 8-4(b)(1), (6), (7), (8), (11), (15) and (16) above and only to applications received after March 1, 1997.

Section 8-5 Committee Review of Application

- (a) The Committee shall review each eligible original application received and make a determination of reimbursement, inform the applicant of its determination and, as appropriate, reimburse the applicant from the Fund.
- (b) Prior to approval of reimbursement, the Committee shall affirmatively determine that:
 - (1) Requested reimbursement expenses are:
 - (i) Eligible costs;
 - (ii) Reasonable as determined by the Committee;
 - (iii) Actually, necessarily incurred for the preparation or implementation of a corrective action plan approved by the Director or for eligible third-party damages.
 - (2) The applicant is:

- (i) Eligible for reimbursement; and
 - (ii) In substantial compliance with all applicable rules and regulations.
- (c) An application which does not contain all of the information required, may be rejected by the Committee, without prejudice. Rejection of the application by the Committee does not prevent the applicant from filing another application for the same release.
 - (d) The Committee is not required to commence the substantive review of an application until receipt of all information required from the applicant and the Director determines the application is properly and fully completed.
 - (e) If during the course of the substantive review, additional information of the type required by these regulations is needed to evaluate the application, the applicant may be required to provide such additional information. Further review of the application may be suspended until such information is received.
 - (f) The Committee's approval of the proposed corrective action(s) shall not be considered a finding or guarantee of safety or effectiveness of the plan(s). Nothing in these regulations shall be construed to abrogate or limit the immunity or exemption from civil liability of any agency, entity or person under any statute including the Colorado Governmental Immunity Act, Article 10 of Title 24 or C.R.S. § 13 21 108.5.
 - (g) The approval and disbursement of funds by the Fund and/or Committee does not constitute transfer of ownership of any contaminated soils, equipment, or related items relating to corrective action. Ownership of any and all items relating to corrective action will remain the property of the applicant.
 - (h) Multiple releases at a facility may be considered by the Committee either as single or separate releases to make the most efficient use of the Fund or to provide the most effective protection to human health or the environment.

Section 8-6 Fund Payment Report

- (a) Upon completion of the review of an application, the Committee shall prepare a Fund Payment Report (FPR) indicating which of the applicant's costs the Committee believes should be reimbursed and which costs should not be reimbursed. If the Committee finds that any cost should not be paid to the full amount requested, it shall briefly state the reasons in its report. The Committee shall submit a copy of its report to the applicant.
- (b) The applicant shall review the FPR and shall, if dissatisfied with any facts therein, file a written protest with the Committee within 60 calendar days of the date of the FPR. If the applicant does not file a written protest within the 60 calendar days, the applicant will have waived his/her right to object to anything covered by the FPR. After the 60 calendar days, everything regarding the application, including the amount of reimbursement and percentage reductions (including any reductions applicable to future applications), will be deemed final. However, costs determined to be not eligible cannot be protested.
- (c) The protest of the FPR must be signed by the applicant and contain any information required by the Committee or the Director, including a clear statement of each item which the applicant disputes on the FPR.
- (d) The protest shall be submitted on a form provided by the Committee or the Director.

Section 8-7 Miscellaneous Regulations

- (a) Nothing in these regulations precludes the Committee or the Director from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of any statute, regulation or order.
- (b) Nothing in these regulations changes the responsibilities of an owner/operator of a storage tank to respond to a release of regulated substances or to comply with any other state or Federal requirements, statutes, regulations or orders.
- (c) No person shall knowingly submit false information to the Committee as part of any materials required to be submitted under these regulations.
- (d) If an applicant owes money to the Fund or to the Director, including but not limited to penalties or past due registration fees, or owes money to any other State agency via the Vendor Offset Subsystem pursuant to CRS § 24-30-202.4, the amount owed will be deducted from any proposed reimbursement amount to the applicant.

ARTICLE 9 PETROLEUM CLEANUP AND REDEVELOPMENT FUND (REDEVELOPMENT FUND)

Section 9-1 Redevelopment Fund Purpose

The Redevelopment Fund is administered by OPS.

- (a) The Redevelopment Fund will enable investigation and cleanup of petroleum contamination at petroleum storage tank sites that are not eligible for reimbursement from the Petroleum Storage Tank Fund (PSTF). Cleaning up these sites will minimize risk to Colorado's groundwater resources and enhance the potential for these properties to be redeveloped or reused.
- (b) Redevelopment Fund monies are available in the form of reimbursement to property owners upon completion of one or more of the following approved activities:
 - (1) Petroleum UST removal.
 - (2) Site assessment to determine if contamination from petroleum storage tanks is present on the property (Level I activity).
 - (3) Site characterization if petroleum contamination is discovered on the property (Level II activity).
 - (4) Cleanup of the petroleum contamination (Level III activity).
- (c) This article includes sections pertaining to eligibility criteria, eligible activities, the application and funding process, establishing project costs and required cost-matching for assessment and cleanup actions. Additionally, this article defines the mechanism for distributing monies from the Redevelopment Fund.

Section 9-2 Eligibility Criteria

- (a) Eligibility to participate in the Redevelopment Fund is dependent on the applicant satisfying all of the following criteria:
 - (1) Applicant is the current property owner.
 - (2) Applicant can provide evidence that petroleum storage tanks are present or existed on the property.

- (3) Applicant is not eligible for reimbursement from the PSTF.
- (4) Applicant has a plan for redevelopment or reuse of the property.

Section 9-3 Eligible Activities

(a) Petroleum UST Removal

- (1) Approved applicants shall be eligible for up to \$2,000 in reimbursement of direct costs associated with each petroleum UST removed.
- (2) Requests for reimbursement can be made at any time following the documented completion of the tank removal.

(b) Level I Site Assessment

- (1) The Level I site assessment to measure for the presence of a petroleum release from a storage tank system is considered an eligible activity. To meet the requirement to obtain a NFA determination, the petroleum storage tank area, product line and dispenser locations must be evaluated.
- (2) All proposed work conducted in Level I must be clearly identified in a project work plan prior to beginning the assessment activities. The work plan shall include a budget projection and estimated project completion timeline. Work plans shall be submitted prior to conducting Level I activities.
- (3) All approved applicants shall be responsible for 10% of the Level I site assessment costs, which will be deducted from the reimbursement award.
- (4) The maximum amount payable from the Redevelopment Fund for a Level I site assessment is \$20,000.

(c) Level II Site Characterization

- (1) The Level II site characterization to establish the extent of petroleum contamination that exceeds the current OPS Tier 1 RBSLs and a simple activity, such as limited excavation of petroleum-impacted soils or the development of a cleanup corrective action plan, are considered eligible activities.
- (2) All proposed work conducted in Level II must be clearly identified in a project work plan prior to beginning the characterization activities. The work plan shall include a budget projection and estimated project completion timeline. Work plans shall be submitted prior to conducting Level II activities.
- (3) All approved applicants shall be responsible for 10% of the Level II site characterization costs, which will be deducted from the reimbursement award.
- (4) The maximum amount payable from the Redevelopment Fund for a Level II site characterization is \$30,000.

(d) Level III Cleanup

- (1) The Level III cleanup activities associated with an economically and technically feasible approach to mitigate petroleum contamination to an acceptable level are considered eligible activities.

(2) Requests for cleanup funding must include a project work plan that contains a discussion of the project technical feasibility and cleanup goals, budget projection and estimated project completion timeline.

(3) All approved applicants shall be responsible for 50% of the Level III cleanup costs, which will be deducted from the reimbursement award.

(4) The maximum amount payable from the Redevelopment Fund for a Level III cleanup is 50% of the eligible cost or \$500,000, whichever is less.

Section 9-4 Application Process

(a) Applications for environmental assessment, characterization and cleanup financial assistance can be submitted at any time utilizing application forms posted on the OPS website. Applications will be periodically reviewed and evaluated based on the applicant's ability to demonstrate the following:

(1) Project plan results in reducing risk to the environment from petroleum contamination.

(2) Applicant has the ability to meet Level I and II deductibles and has leveraged matching funds for Level III cleanup activities.

(3) Redevelopment or reuse plan generates a positive economic and/or social impact on the community.

(b) Successful applicants will be notified at least quarterly, subject to the availability of money in the Redevelopment Fund.

(c) Applicants from the same corporate family are not eligible for awards at more than one property per year.

Section 9-5 Eligible Costs and Reimbursement

(a) Costs associated with eligible activities completed during the application process and subsequent project site assessment, characterization and cleanup will be reimbursed.

(b) In general, project costs shall not exceed the current Reasonable Cost Guideline unit rates.

(c) Requests for reimbursement must include the following:

(1) Documentation of the work performed per project work plan.

(2) Proof of payment for all invoices submitted for reimbursement.

(3) Affidavit of work performed, with regards to services, material, and equipment procured by the applicant.

(d) Reimbursement of Level III cleanup costs shall be contingent upon completion of project milestones in the approved cleanup work plan.

Section 9-6 Contractual Agreements

Property owners that are eligible for Level I, II and III activities shall enter into a contractual agreement with OPS for the appropriate level. Upon execution of a contractual agreement, OPS will issue the property owner a notice to proceed that affirms a commitment to reimburse a specified amount of money from the Redevelopment Fund.

- (3) Applicant is not eligible for reimbursement from the PSTF.
- (4) Applicant has a plan for redevelopment or reuse of the property.

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(3) Affidavit of work performed, with regards to services, material, and equipment procured by the applicant.

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Property owners that are eligible for Level I, II and III activities shall enter into a contractual agreement with OPS for the appropriate level. Upon execution of a contractual agreement, OPS will issue the property owner a notice to proceed that affirms a commitment to reimburse a specified amount of money from the Redevelopment Fund.

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Office of the Attorney General

Tracking number: 2016-00307

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Oil and Public Safety

on 08/16/2016

7 CCR 1101-14

UNDERGROUND STORAGE TANKS AND ABOVEGROUND STORAGE TANKS

The above-referenced rules were submitted to this office on 08/16/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:44:16

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Oil and Public Safety

CCR number

7 CCR 1101-17

Rule title

7 CCR 1101-17 Retail Hydrogen Fueling Regulations 1 - eff 01/01/2017

Effective date

01/01/2017

**COLORADO DEPARTMENT OF
LABOR AND EMPLOYMENT**

DIVISION OF OIL AND PUBLIC SAFETY

RETAIL HYDROGEN FUELING REGULATIONS

7 CCR 1101-17

Effective: January 1, 2017



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ARTICLE 1 GENERAL PROVISIONS

Section 1-1 Basis and Purpose

The basis and purpose of these regulations is to set forth minimum standards for the design, construction, location, installation and operation of retail hydrogen fueling facilities, which are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials.

Section 1-2 Technical Rationale

The technical requirements of these regulations are based on generally-accepted national and international codes and standards governing the minimum levels of acceptability for inspections, specifications, shipment notification, record keeping, labeling of containers, use of meters or mechanical devices for measurement, submittal of installation plans and minimum standards for the design, construction, location, installation and operation of retail hydrogen systems.

Section 1-3 Statutory Authority

These regulations are created pursuant to 8-20-102 of the Colorado Revised Statutes.

Section 1-4 Effective Date

These regulations shall be effective on January 1, 2017.

Section 1-5 Codes and Standards incorporated by reference

The following codes are incorporated by reference.

- (a) NFPA 2, *Hydrogen Technologies Code*, 2016 edition.
- (b) NFPA 55, *Compressed Gases and Cryogenic Fluids Code*, 2016 edition.
- (c) NFPA 30-A, *Code for Motor Fuel Dispensing Facilities & Repair Garages*, 2012 edition. (d) NIST Handbook 44 *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, 2016 edition.
- (e) NIST Handbook 130, *Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality*, 2016 edition.
- (f) SAE J 2601, *Fueling Protocols for Light Duty Gaseous Hydrogen Surface Vehicles*, 2014 edition.
- (g) SAE J 2719, *Hydrogen Fuel Quality for Fuel Cell Vehicles*, 2015 edition.

Section 1-5-2 Inspection of incorporated codes

Interested parties may inspect the referenced incorporated materials by contacting the Division at 633 17th Street, Suite 500, Denver, CO 80202.

Section 1-5-3 Later amendments not included

These regulations do not include later amendments to or editions of the incorporated material.

Section 1-6 Definitions

Terms in these regulations shall have the same meaning as those found in Title 8, Article 20 of the Colorado Revised Statutes. In addition, unless the context otherwise requires:

ASME – Means the American Society of Mechanical Engineers (ASME).

ASTM International – Formerly the American Society for Testing and Materials (ASTM).

California Type Evaluation Program (CTEP) - Means the evaluation program administered by the California Department of Food and Agriculture, Division of Measurement Standards.

Condemned – Means a *condemned container assembly and piping system* which is determined by a state inspector to be so unsafe that further use is prohibited until it is satisfactorily repaired or replaced.

Container Assembly – Includes ASME containers, commonly known as tanks or cylinders.

CRS – Means the Colorado Revised Statutes.

Delivery – Means delivery of hydrogen to a hydrogen fueling facility by means of truck transport or connected pipeline.

Division – Means the *Division of Oil and Public Safety*, which is the regulatory agency of the Colorado Department of Labor and Employment having jurisdiction over retail natural gas systems per the provisions of CRS 8-20-102 (3).

Existing Installation – Includes any hydrogen container assembly and piping system at a retail hydrogen fueling facility that has been placed into service prior to the effective date of these regulations or has received its initial inspection by a state inspector.

Hydrogen Fuel – A fuel composed of molecular hydrogen intended for use in motor vehicles.

Hydrogen Fueling Facility – Means a facility that has a hydrogen fueling system which is used for motor vehicle fueling.

Hydrogen Fueling System – Means a hydrogen storage container assembly, associated piping and dispenser(s) which is used for motor vehicle fueling.

Incident – Means a reportable accident, as defined by this regulation.

National Board – Means the National Board of Boiler and Pressure Vessel Inspectors.

National Type Evaluation Program (NTEP) - Means the evaluation program administered by the National Conference on Weights and Measures.

New Installation – Means any hydrogen container assembly, associated piping or dispenser(s) at a hydrogen fueling facility that has been placed into service after the effective date of these regulations or has not received its initial inspection by a state inspector.

NFPA – Means the National Fire Protection Association.

NIST– Means the National Institute of Standards and Technology.

Piping System – Means pipes, tubing, hose and flexible connectors with valves and fittings made into complete systems for conveying hydrogen from one point to another within a retail hydrogen fueling facility.

Proved – Means the act of having verified the accuracy of meters used to measure fuel and petroleum products using a prover.

Prover – Means a calibrated volumetric receiver or mechanical device traceable to NIST standards.

Registered Serviceperson – Means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device and who voluntarily registers with the Division.

Registered Service Agency (RSA) – Means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device and that voluntarily registers with the Division. Under agency registration, identification of individual servicepersons shall be required.

Retail – Means the sale of hydrogen at a hydrogen fueling facility, in small or individual quantities for use as a motor fuel by the purchaser.

State Inspector – Means a person who is employed or authorized by the Division to perform inspections of retail hydrogen fueling facilities.

Section 1-7 Applicability

The regulations contained herein shall apply to the installation and operation of all retail hydrogen fueling facilities.

Section 1-8 Condemning a Hydrogen Container Assembly and Piping System

- (a) Conditions which a state inspector may determine to be unsafe include: bypassed safety controls, inoperative relief valves, any leak from a hydrogen fueling system, missing nameplate or markings, or any other condition deemed by a state inspector to be unsafe based on codes incorporated by this regulation. A hydrogen fueling system that meets any condition described above may be condemned by a state inspector.
- (b) The owner or user must shut down the condemned hydrogen fueling system as directed by a state inspector. If neither the owner nor user is available, a state inspector will take necessary means to have the system safely shut down.
- (c) A state inspector will affix a notice to a condemned hydrogen fueling system stating that it has been condemned and may not be used until satisfactory repairs are made, as determined by a re-inspection by a state inspector or other person authorized by the Division.

ARTICLE 2 INSTALLATION AND REGISTRATION

No person may install, or cause to be installed, a new retail hydrogen fueling facility until:

- (a) An application, as described in Section 2-2 has been approved by the Division and an installation permit has been issued by the Division;
- (b) The installation plan has been reported to the local Fire Department having jurisdiction; and
- (c) The application and inspection fee described in Section 2-2(a)(3) has been paid.

Section 2-1 General Requirements

- (a) All new retail hydrogen fueling facilities shall be operated and maintained in accordance with the codes incorporated by this regulation, including any retroactive requirements adopted by the Division at the time of installation.
- (b) All existing retail hydrogen fueling facilities shall be operated and maintained in accordance with the edition of the incorporated codes that were in effect at the time of original construction.
 - (1) If after inspection the Division determines that an existing situation presents an unacceptable degree of risk, the Division shall be permitted to apply retroactively any portion of the incorporated codes as deemed appropriate.
- (c) Local Authorities Having Jurisdiction, including Fire Departments and building code officials, may adopt and enforce more stringent requirements than the minimum standards in these regulations. These requirements may include, but are not limited to, the following:
 - (1) Plan review and permitting for new hydrogen fueling facilities.
 - (2) Access to hydrogen fueling facilities for the purpose of conducting inspections.
 - (3) Delivery into containers located at hydrogen fueling facilities.

Section 2-2 Installation Permits

- (a) Plans for all new retail hydrogen fueling facilities shall be submitted to and approved by the Division before construction of such facility begins.
 - (1) Plans for the installation of new container assembly, associated piping or dispenser(s) at existing retail hydrogen fueling facilities shall be submitted to the Division for approval before construction of such installation begins.
 - (2) Plans for change of service of existing hydrogen fueling facilities from non-retail to retail service shall be submitted to the Division for approval before any such change of service occurs.
 - (3) For each installation plan submitted, the owner/operator must remit a fee of one thousand dollars (\$1,000) to the Division to cover the costs of the site plan review and installation inspection.
 - (4) It is not necessary to submit plans for the repair or replacement of existing equipment at a permitted facility.
- (b) The permit procedures are as follows.

- (1) The permit application shall be submitted using an application form provided by the Division.
- (2) The application shall include a plot plan containing all elements required by the Division.
- (3) The Division may deny the permit application if the proposed installation does not conform to the requirements of the Colorado Revised Statutes, this regulation or any of the codes incorporated by reference, or if the application is determined to be incomplete or inaccurate.
- (4) Construction and installation of all associated equipment shall conform to the incorporated codes in effect at the time of installation.
- (5) The Division may revoke a permit if construction is not performed per the approved permit or if the construction fails to meet operating or fire safety regulations established by the Division or by the applicable incorporated codes.
- (6) An installation permit approved by the Division is automatically revoked if construction does not begin within 6 months of approval unless a written request for an extension is submitted to and approved by the Division.

Section 2-3 Annual Registration

- (a) Each owner/operator of a retail hydrogen fueling facility must register their facility with the Division within 30 calendar days after the first day on which the facility begins storing hydrogen fuel. This registration must be made on a form provided by the Division.
- (b) Each owner/operator of a retail hydrogen fueling facility shall renew their registration annually, on or before the calendar date of the initial registration.
- (c) Each owner/operator of a retail hydrogen fueling facility shall pay a registration fee of \$1,000 per facility per year as authorized by CRS 8-20-102.

Section 2-4 Access Requirements

- (a) The Division may inspect a retail hydrogen fueling facility at any time during its construction. Access shall be provided to the Division or its agent for such purpose upon request.
- (b) The Division may inspect a retail hydrogen fueling facility upon completion to verify compliance with design, construction, location, installation and operation, dispensing and fuel quality requirements in these regulations. Retail hydrogen fueling facility owners, hydrogen fueling system owners and owners of locations where a retail hydrogen fueling system is installed shall grant inspection access to the Division or its agent for such purpose upon request.

ARTICLE 3 DISPENSING AND FUEL QUALITY

Section 3-1 Retail Dispensing of Hydrogen

- (a) All retail dispensers of hydrogen used as a motor vehicle fuel shall be operated and maintained in accordance with the applicable requirements of the codes incorporated by this regulation.
- (b) All retail dispensing of hydrogen into motor vehicles shall be in conformance with SAE J2601, "Fueling Protocols for Light Duty Gaseous Hydrogen Surface Vehicles."

Section 3-2 Retail Motor Fuel Dispensers Inspection and Testing

- (a) All retail motor fuel dispensers (RMFDs) shall be suitable for their intended use, properly installed, accurate and maintained in that condition by their owner/operator.
- (b) All RMFDs shall have an active certificate of conformance (CC) from either the National Type Evaluation Program (NTEP) or the California Type Evaluation Program (CTEP) prior to installation or use for commercial purposes.
- (c) All RMFDs shall be capable of displaying delivered quantity in units of mass and all adjustments and calibrations of RMFDs shall be made utilizing mass measurement standards.
- (d) The Division shall be notified when any new or remanufactured RMFD is placed in service at a new or existing installation.
 - (1) Notification shall be submitted using a placed in service report provided by the Division.
- (e) No owner/operator of any RMFD shall use the RMFD for the measurement of hydrogen unless it has been proved in a manner acceptable to the Division and sealed as correct by a state inspector or registered service agency (RSA).
 - (1) All RMFDs shall be proved and sealed as correct on an annual basis by either a state inspector or RSA.
- (f) Means shall be provided at the hydrogen fueling facility to return all hydrogen product used for proving meters back to the storage equipment or the facility's hydrogen vent system when proving is completed.
- (g) If any RMFD fails to comply with any of the provisions of this regulation, a state inspector shall seal it in such a manner as to prohibit its use and it shall remain sealed until it complies with all of the provisions of this regulation.
 - (1) When an RMFD is brought back into compliance with this regulation, it must be placed back in service by a state inspector or RSA.
- (h) All RMFDs shall comply with the minimum standards as prescribed by the applicable sections of the codes incorporated by this regulation except as modified or rejected by this regulation or by the Division.

Section 3-3 Retail Motor Fuel Dispensers for Hydrogen

- (a) The symbol for hydrogen vehicle fuel shall be the capital letter “H” (the word “Hydrogen” may also be used).
- (b) Each RMFD of hydrogen shall be labeled with the product identity shown in a conspicuous location on the dispenser, using the symbol for hydrogen vehicle fuel (the capital letter “H” or the word “Hydrogen”).
- (c) Hydrogen shall be labeled in accordance with 16 CFR 309, “FTC Labeling Alternative Fuels.”
- (d) NFPA labeling requirements also apply; refer to NFPA 2.
- (e) All Hydrogen kept, offered or available for sale or sold at retail as a vehicle fuel shall be in units of mass (kilograms).
- (f) A computing dispenser must display the unit price in whole cents on the basis of price per kilogram (e.g., \$3.49 per kg, not \$3.499 per kg).
- (g) The service pressure(s) of the dispenser must be conspicuously shown on the user interface bar or the SI unit of pascal (Pa) (e.g., MPa).

Section 3-4 Street Sign Prices and Advertisements

- (a) The unit price must be in terms of price per kilogram in whole cents (e.g., \$3.49 per kg, not \$3.499 per kg).
- (b) The sign or advertisement must include the service pressure (expressed in megapascals) at which the dispenser(s) delivers hydrogen fuel (e.g., H35 or H70).

Section 3-5 Product Quality

- (a) Hydrogen Fuel shall meet the latest version of SAE J2719, “Hydrogen Fuel Quality for Fuel Cell Vehicles.”
- (b) All equipment, including filters and strainers, used to prevent any foreign material, including compressor oil or water, from being dispensed into a motor vehicle shall be periodically serviced and maintained.
- (c) Any shipper of hydrogen fuel products to be used for retail motor fuel who ships such product into the state of Colorado or ships hydrogen fuel products from one point within the state to another point within the state shall make records of such shipments available to the Division upon request.

ARTICLE 4 DELIVERY INTO RETAIL HYDROGEN SYSTEMS

No owner/operator of a retail hydrogen fueling facility shall allow hydrogen to be delivered into the following:

- (a) An improperly-installed container assembly or piping system installed at a hydrogen fueling facility.
- (b) A container installed at a hydrogen fueling facility that does not have a proper ASME nameplate.

ARTICLE 5 ACCIDENT REPORTS AND INVESTIGATIONS

Section 5-1 Reportable Accidents

- (a) Accidents, fires, explosions, injuries, damage to property or loss of life resulting from the storage or dispensing of hydrogen at retail hydrogen fueling facilities shall be reported to the Division within 24 hours after their occurrence.
- (b) Subsection (a) of this Section includes accidents resulting from the improper use or installation of compression, storage and dispensing equipment or equipment failure at retail hydrogen fueling facilities.
 - (1) The Division may investigate such occurrences and shall maintain a written record of findings, which shall be available for public examination.

Section 5-2 Reporting Requirements

- (a) The owner/operator or other representative of the retail hydrogen fueling facility is required to notify the Division of an accident that meets any of the criteria of Section 5-1.
- (b) Accidents may be reported by telephone (303-318-8547), or email (cdle_oil_inspection@state.co.us).
- (c) The accident report shall include, at minimum, the following information:
 - (1) The names of the owner/operator and person making the report and their telephone numbers.
 - (2) The date, time and location of the accident.
 - (3) The number of fatalities and personal injuries.
 - (4) All other significant facts known by the person making the report that are relevant to the cause of the accident or extent of the damages.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

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Solicitor General



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Office of the Attorney General

Tracking number: 2016-00320

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Oil and Public Safety

on 08/16/2016

7 CCR 1101-17

Retail Hydrogen Fueling Regulations

The above-referenced rules were submitted to this office on 08/16/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:21:11

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-7

Rule title

3 CCR 713-7 Rule 400 - RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY PHYSICIAN ASSISTANTS (PAS) 1 - eff 08/18/2016

Effective date

08/18/2016

COLORADO MEDICAL BOARD RULES

Rule 400
3 CCR 713-7

RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY PHYSICIAN ASSISTANTS (PAS)

INTRODUCTION

BASIS: The authority for promulgation of Rule 400 (“these Rules”) by the Colorado Medical Board (“Board”) is set forth in Sections 24-4-103, 12-36-104(1)(a), 12-36-106(5) and 12-36-107.4, C.R.S.

PURPOSE: The purpose of these rules and regulations is to implement the requirements of Section 12-36-107.4 and 12-36-106(5) and provide clarification regarding the application of these rules to various practice settings.

SECTION 1. QUALIFICATIONS FOR LICENSURE APPLICATION

A. To apply for a license, an applicant shall submit:

1. A completed Board-approved application and required fee; and
2. Proof of satisfactory passage of the national certifying examination for assistants to the primary care physician administered by the National Commission on Certification of Physician Assistants.

SECTION 2. EXTENT AND MANNER IN WHICH A PHYSICIAN ASSISTANT MAY PERFORM DELEGATED TASKS CONSTITUTING THE PRACTICE OF MEDICINE UNDER PERSONAL AND RESPONSIBLE DIRECTION AND SUPERVISION

A. Responsibilities of the Physician Assistant

1. Compliance with these Rules. A physician assistant and the physician assistant’s supervising physician are responsible for implementing and complying with statutory requirements and the provisions of these Rules.
2. License. A physician assistant shall ensure that his or her license to practice as a physician assistant is active and current prior to performing any acts requiring a license.

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3. Registration. A physician assistant shall ensure that a form in compliance with Section 4 of these Rules is on record with the Board.

4. Nameplate. While performing acts defined as the practice of medicine, a physician assistant shall wear a nameplate with the non-abbreviated title “physician assistant” clearly visible.

5. 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 12-36-106(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 name of the physician consulted and the date of the consultation.

6. Documentation. A physician assistant shall keep such documentation as necessary to assist the supervising physician in performing an adequate performance assessment as set forth below in Section 2(C)(6) of these Rules.

7. Acute Care Hospital Setting

a. Physician assistants performing delegated medical functions in an acute care hospital setting must comply with the requirements of Section 12-36-106(5)(b)(II), C.R.S.

b. For purposes of this section, “reviewing the medical records” means review and signature by the primary physician supervisor or a secondary physician supervisor.

B. Types of Physician Supervisors and Scope and Authority to Delegate

1. Four Physician Assistant Limit. Except as otherwise provided in Section 2(E) of these Rules, no physician shall be the primary physician supervisor for more than four specific, individual physician assistants. The names of such physician assistants shall appear on the form in compliance with Section 4 of these Rules. The primary physician supervisor may supervise additional physician assistants other than those who appear on the form in compliance with Section 4 of these Rules. In other words, a primary physician supervisor may also be a secondary physician supervisor, as set forth below, for additional physician assistants so long as such supervision is in compliance with these Rules.

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2. Primary Physician Supervisor. Except as set forth in Section 2(B)(3) of these Rules, a physician licensed to practice medicine by the Board may delegate to a physician assistant licensed by the Board the authority to perform acts that constitute the practice of medicine only if a form in compliance with Section 4 of these Rules is on record with the Board. The physician whose name appears on the form in compliance with Section 4 of these Rules shall be deemed the “primary physician supervisor”. The supervisory relationship shall be deemed to be effective for all time periods in which a form in compliance with Section 4 of these Rules is on file with the Board.

a. A physician assistant shall have at least one primary physician supervisor for each employer. If the employer is a multi-specialty organization, e.g., a multi-specialty practice, hospital, hospital system or health maintenance organization, the physician assistant shall have a primary supervisor, duly registered with the Board, per specialty practice area when performing delegated tasks consistent with the delegating physician’s education, training, experience, and active practice.

3. Secondary Physician Supervisors. A physician licensed to practice medicine by the Board, other than the supervisor whose name appears on the form in compliance with Section 4 of these Rules, may delegate to a physician assistant licensed by the Board the authority to perform acts which constitute the practice of medicine only as permitted by Section 2(D) of these Rules. Such physician shall be termed a “secondary physician supervisor”. Secondary physician supervisors do not need to be registered with the Board.

4. Delegation of Medical Services. Delegated services must be consistent with the delegating physician’s education, training, experience and active practice. Delegated services must be of the type that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate. A physician may only delegate services that the physician is qualified and insured to perform and services that the physician has not been restricted from performing. Any services rendered by the physician assistant will be held to the same standard that is applied to the delegating physician.

C. Responsibilities of and Supervision by the Primary Physician Supervisor

1. Compliance with these Rules. Both the supervising physician and the physician assistant are responsible for implementing and complying with the

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statutory requirements and the provisions of these Rules.

2. Liability for Actions of a Physician Assistant. A primary physician supervisor may supervise and delegate responsibilities to a physician assistant in a manner consistent with the requirements of these Rules. Except as provided in Sections 2(B)(3) and 2(D) of these Rules, the primary physician supervisor shall be deemed to have violated these Rules if a supervised physician assistant commits unprofessional conduct as defined in Section 12-36-117(1)(p), C.R.S., or if such physician assistant otherwise violates these Rules. The primary physician supervisor shall not be responsible for the conduct of a physician assistant where that physician assistant was acting under the supervision of another primary physician supervisor and there is a form in compliance with Section 4 of these Rules signed by that other primary physician supervisor. The primary physician supervisor shall also not be responsible for the conduct of a physician assistant where that physician assistant consulted with a secondary physician supervisor and documented such consultation in the chart note as required under Section 2(A)(5) of these Rules.

3. License Status. Before authorizing a physician assistant to perform any medical service, the supervising physician should verify that the physician assistant has an active and current Colorado license issued by the Board.

4. Qualifications. Before authorizing a physician assistant to perform any medical service, the supervising physician is responsible for evaluating the physician assistant's education, training and experience to perform the service safely and competently.

5. Supervision

a. New physician assistant graduates - Must meet all of the following:

(1) For the first six months of employment and a minimum of 500 patient encounters, a physician supervisor shall review the chart for every patient seen by the physician assistant no later than seven days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that

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reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(2) Additionally, a primary or secondary supervising physician of a new physician assistant graduate must provide on-site supervision of the new physician assistant graduate for that physician assistant's first 1000 working hours.

(3) The supervising physician must complete a performance assessment as outlined in Section 2(C)(6) of these Rules by the end of the first six months of employment and quarterly thereafter for the first two years of employment. After the physician assistant has been working for more than two years, performance assessments must be completed twice each 12-month period for an additional three years.

b. Experienced Physician Assistants New to a Practice Setting:

(1) The term "New to a Practice Setting" means for the purposes of this Rule:

(i) The change of the primary supervising physician and practice; or

(ii) A substantive change in scope of practice or practice area.

(2) Based on the years of active practice by the Physician Assistant, the following minimum activities must be performed:

(i) A Physician Assistant with less than six months experience:

Follow new graduate requirements as set forth in Section 5(a) until the PA reaches a total of six months experience as a PA.

(ii) A Physician Assistant with more than six months but with less than five years' experience:

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For the first three months of employment and a minimum of 500 patient encounters, a physician supervisor shall review the chart for every patient seen by an experienced physician assistant new to a practice setting no later than 14 days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(iii) A Physician Assistant with five years and less than 10 years' experience:

For the first two months of employment and a minimum of 250 patient encounters, a physician supervisor shall review the chart for every patient seen by an experienced physician assistant new to a practice setting no later than 14 days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(iv) A Physician Assistant with 10 years or more experience:

For a minimum of 100 patient encounters, a physician supervisor shall review the chart for every patient seen by an experienced physician assistant new to a practice setting no later than 14

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days after the physician assistant has performed an act defined as the practice of medicine. The physician supervisor shall document the performance of such review by signing the chart in a legible manner. In lieu of signing the chart, the physician supervisor may document the performance of such review by the use of an electronically generated signature provided that reasonable measures have been taken to prevent the unauthorized use of the electronically generated signature.

(3) The supervising physician must complete a performance review for all physician assistants with less than 5 years' experience in accordance with Section 2(C)(5)(a)(3). For all other physician assistants new to a practice setting, the supervising physician must complete a performance review by the end of the first six months and once each 12- month period thereafter.

(4) On site supervision for an experienced physician assistant, as defined in Section 2(C)(5)(b) and (c) of these Rules, is not required; instead it is at the discretion of the supervising physician.

c. All other Physician Assistants:

(1) The supervising physician shall meet with the physician assistant a minimum of one time during each 12-month period and conduct a performance assessment as set forth in Section 2(C)(6) of these Rules.

(2) On site supervision for an experienced physician assistant, as defined in Section 2(C)(5)(b) of these Rules, is not required; instead it is at the discretion of the supervising physician.

6. Performance Assessment

a. A physician who supervises a physician assistant shall develop and carry out a periodic performance assessment as required by these Rules to assist in evaluating and maintaining the quality of care provided by a

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physician assistant. The performance assessment must include but need not be limited to:

- (1) An assessment of the medical competency of the physician assistant;
- (2) A review and initialing of selected charts;
- (3) An assessment of a representative sample of the referrals or consultations made by the physician assistant with other health professionals as required by the condition of the patient;
- (4) An assessment of the ability of the physician assistant to take a medical history from and perform an examination of patients representative of those cared for by the physician assistant; and
- (5) Maintenance by the supervising physician of accurate records and documentation of the performance assessments for each physician assistant supervised.

b. The Board may audit a supervising physician's performance assessment records. Upon request, the supervising physician shall produce records of the performance assessments as required by the Board.

7. Availability of the physician supervisor

- a. The supervising physician must provide adequate means for communication with the physician assistant.
- b. If not physically on site with the physician assistant, the primary or secondary physician supervisor must be readily available by telephone, radio, pager, or other telecommunication device.

D. Responsibilities of the Secondary Physician Supervisor

1. If a physician who is not the primary physician supervisor consults with a physician assistant regarding a particular patient, the physician is a secondary physician supervisor. The physician assistant must document the consultation

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date and name of all physicians consulted in the patient chart.

2. Such physician shall be deemed to be responsible for any action or omission involving the practice of medicine supervised by the secondary physician supervisor involving the particular patient.

E. Waiver of Provisions of these Rules

1. Criteria for Obtaining Waivers.

a. Upon a showing of good cause, the Board may permit waivers of ANY provision of these Rules.

b. 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 distant from the physician supervisor; 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 supervisor or the physician assistant; and whether the physician assistants in question work less than a full schedule.

c. It is anticipated that waivers may be granted to permit a physician supervisor to supervise more than four physician assistants provided the Full Time Employee Equivalent is not more than four FTE and the physician is not supervising more than four physician assistants at any one time.

d. 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.

2. Procedure for Obtaining Waivers.

a. Applicants for waivers must submit a written application on forms approved by the Board detailing the basis for the waiver request.

b. The written request should address the pertinent factors listed in Section 2(E)(1)(b) of these Rules and include a copy of any written protocols in place for the supervision of physician assistants.

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c. Upon receipt of the waiver request and documentation, the matter will be considered at the next available Board meeting.

d. If a waiver to the four physician assistant limit is granted, the primary supervising physician must submit a revised form in compliance with Section 4 of these Rules containing the names of all physician assistants to be supervised before the waiver shall become effective.

SECTION 3. PRESCRIPTION AND DISPENSING OF DRUGS.

A. Prescribing Provisions:

1. A physician assistant may issue a prescription order for any drug or controlled substance provided that:

a. Each prescription and refill order is entered on the patient's chart.

b. Each written prescription order shall be signed by the physician assistant and shall contain in legible form the name, address and telephone number of the supervising physician and the name of the physician assistant.

c. Each written prescription for a controlled substance shall contain, in legible form, the name of the physician assistant and the name, address and telephone number of the supervising physician.

d. For all other written prescriptions issued by a physician assistant, the physician assistant's name and the address of the health facility where the physician assistant is practicing must be imprinted on the prescription.

i. 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.

e. Nothing in this Section 3 of these Rules shall prohibit a physician supervisor from restricting the ability of a supervised physician assistant to prescribe drugs or controlled substances.

COLORADO MEDICAL BOARD RULES

f. 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.

g. For the purpose of this Rule electronic prescriptions are considered written prescription orders.

2. Physician assistants shall not write or sign prescriptions or perform any services that the supervising physician for that particular patient is not qualified or authorized to prescribe or perform.

B. Obtaining Prescription Drugs or Devices to Prescribe, Dispense, Administer or Deliver

1. 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 supervising physician, pharmacist or pharmaceutical representative.

2. 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 supervising physician, pharmacist or pharmaceutical representative.

SECTION 4. REPORTING REQUIREMENTS

A. Supervisory Form.

1. Any person wishing to form a supervisory relationship in conformance with these Rules shall file with the Board a form as required by the Board.

2. The form shall be signed by the primary physician supervisor and the physician assistant or assistants for whom the physician intends to be the primary physician supervisor.

3. Except as provided by Board waiver, no primary physician supervisor shall be a primary physician supervisor for more than four specific, individual physician assistants.

4. Except as provided by Board waiver, the names of no more than four

COLORADO MEDICAL BOARD RULES

individual physician assistants shall appear on the form in compliance with this Section of these Rules.

5. The supervisory relationship acknowledged in the form shall be deemed to continue for purposes of these Rules until specifically rescinded by either the physician assistant or the primary physician supervisor in writing.

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

COLORADO MEDICAL BOARD RULES

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

Justification of Emergency Rule

In order to ensure that the Board's rules comply with state law that went into effect August 10, 2016, in addition to adoption of the proposed rule as a permanent rule, the Board finds it is imperatively necessary to adopt the proposed rule as an emergency rule in order to establish the rule's effective date as of the date of this rulemaking hearing. The Board finds that immediate adoption of the proposed rule on an emergency basis is also imperatively necessary for the preservation of the public health, safety or welfare. For the purpose of the emergency rule, the Board finds that, although the Board has complied with publication of notice of the rulemaking hearing, compliance with the requirements of 24-4-103 with regard to publication of the adopted rules with the Secretary of State's office is contrary to the public interest and does not allow the Board to conform its rules to newly-changed state law.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General



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Office of the Attorney General

Tracking number: 2016-00414

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 08/18/2016

3 CCR 713-7

**Rule 400 - RULES AND REGULATIONS REGARDING THE LICENSURE OF AND PRACTICE BY
PHYSICIAN ASSISTANTS (PAS)**

The above-referenced rules were submitted to this office on 08/22/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

September 01, 2016 13:33:55

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 09/16/2016

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: Medicaid State Plan Amendment – Rate Increases for Hospice Services

September 25, 2016

Effective October 1, 2016, the Department intends to submit a State Plan Amendment to increase Hospice provider rates per Centers for Medicare and Medicaid (CMS) guidelines. 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.

Additionally, effective October 1, 2016, Colorado Medicaid will implement the CMS 2% reduction in the Annual Payment Update for all hospices that have not submitted the required quality data for the FY 2017 reporting period.

An updated fee schedule reflecting these rate changes will be posted on the Department's Web site upon approval.

General Information

A link to this notice will be posted on the Department's web-site ([Communication | Colorado Department of Health Care Policy and Financing](#)) starting on September 25, 2016. Written comments may be addressed to: Director, Health Programs Office, Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203.

Our mission is to improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources.
www.colorado.gov/hcpf



Calendar of Hearings

Hearing Date/Time	Agency	Location
10/19/2016 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO
10/17/2016 01:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214; Rm 110 (Board/Commission Meeting Room)
10/20/2016 10:00 AM	Division of Gaming - Rules promulgated by Gaming Commission	142 Lawrence St., Central City, CO 80427
10/17/2016 02:30 PM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
10/17/2016 02:30 PM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
10/21/2016 01:45 PM	Animal Heath Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/21/2016 01:30 PM	Animal Heath Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 09:00 AM	Inspection and Consumer Services Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 09:15 AM	Inspection and Consumer Services Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 09:15 AM	Inspection and Consumer Services Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 09:00 AM	Inspection and Consumer Services Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 09:45 AM	Plant Industry Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 09:30 AM	Plant Industry Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/19/2016 10:00 AM	Plant Industry Division	Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021
10/24/2016 01:00 PM	Division of Homeland Security and Emergency Management	9195 E Mineral Avenue, Policy Room, Centennial, CO